

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,654

LOUISE HILSAMER,


Appellant,

v.

DANIEL W. GIDEON,
Administrator,
Estate of
GEORGE D. GIDEON,

Appellee.

Appeal from The United States District Court
for the District of Columbia

CHARLES H. QUIMBY

650 Warner Building
Washington 4, D. C.

Attorney for Appellant

(i)

QUESTIONS PRESENTED

I.

Is the written contract dated September 1, 1958, between the Appellant and George D. Gideon, wherein the Appellant was given option to purchase real property, capable of interpretation sufficient to permit specific performance in the light of all uncontradicted testimony in the case?

II.

Inasmuch as the contract dated September 1, 1958, was drawn by George D. Gideon, personally, should not any ambiguous or indefinite statements contained therein be construed against the person so drawing the contract in light of all of the testimony in the case?

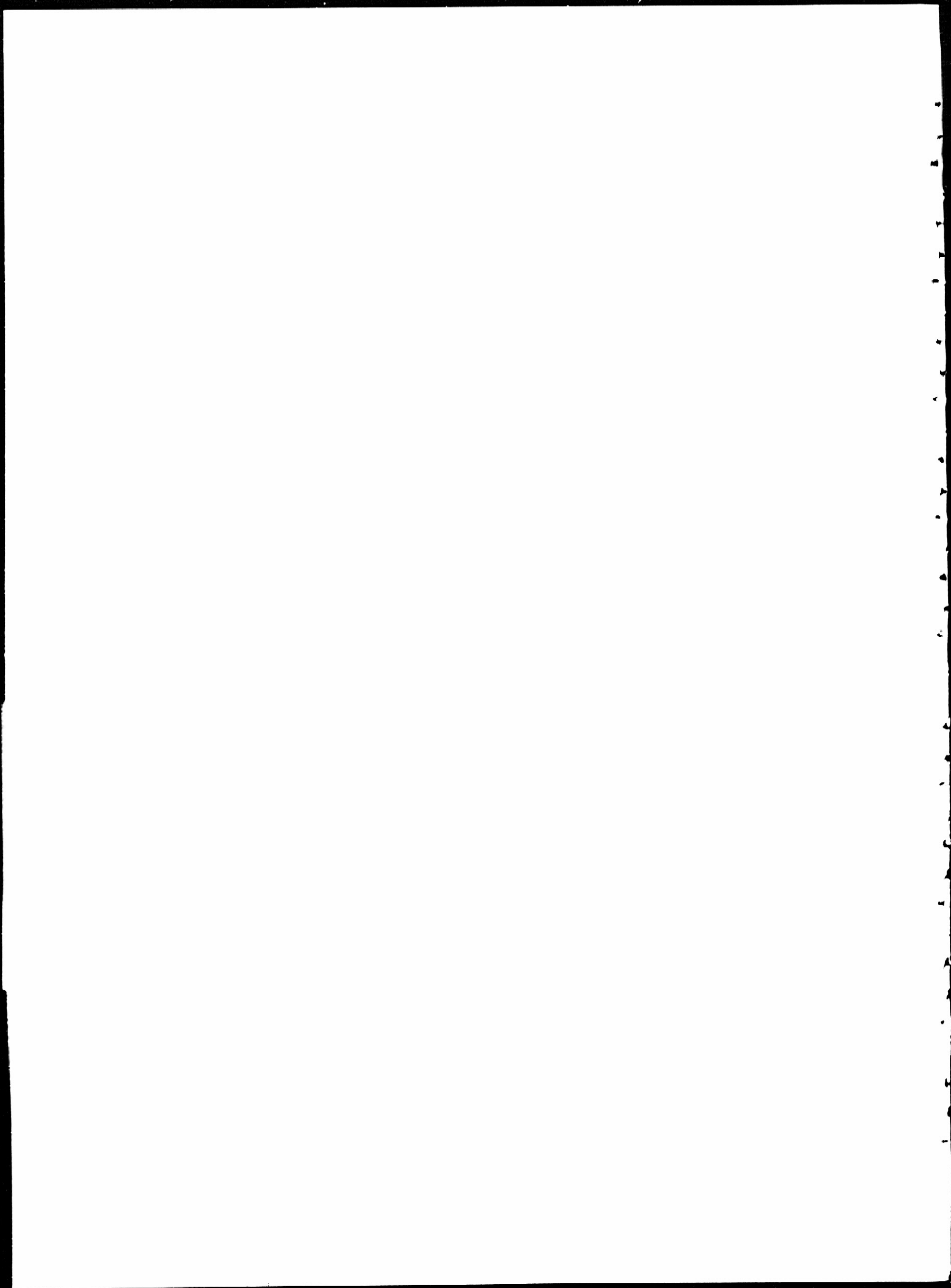
III.

Does not a party who continues to accept monthly payments over a period of approximately three years by reason of written contract waive the right to object to lateness of some of such payments when other party seeks to exercise option to purchase real property as provided in contract?

(iii)

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GEORGE D. GIDEON,

Appellee.

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BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal under Title 28, Section 1291 of the United States Code (1958) from a final judgment of the United States District Court for the District of Columbia. The court below had jurisdiction over the subject matter of this dispute under the authority of Title 11, Section 306 of the District of Columbia Code (1961).

STATEMENT OF THE CASE

On August 24, 1958, there appeared an advertisement in the Sunday Star, a newspaper published in the District of Columbia, which read as follows:

"ROOMING HOUSE OWNER has several good properties. He will sell business and property like rent."

An address and telephone number were included in the ad (J.A. 11). The Appellant, Mrs. Louise Hilsamer, after reading the advertisement, contacted the advertiser who proved to be one George D. Gideon (J.A. 10-11) (NOTE: George D. Gideon died after suit was filed in the lower court and on proper motion, a duly appointed administrator was substituted for the said Gideon, the Appellee herein). She had a conversation with the said George D. Gideon at his home during which he asked her if she had any money, to which inquiry she replied that she did not (J.A. 12). He then suggested that she could rent certain real property known as 30 6th Street, Southeast, in the District of Columbia, under an agreement whereby she would pay the sum of \$200.00 per month and use the property for a rooming house business (J.A. 12). He further told her that he would insert a provision in the lease which he would prepare providing an option to her to purchase the property for a total sale price of \$23,750,000, and further that at such time as she wished to exercise her option, he would give her credit for each \$200.00 rental payment that had been made while she occupied the property (J.A. 12-13). The said Gideon likewise made similar statements to one Roland D. Jackel, a witness at the trial of this cause, concerning the allowances of the \$200.00 monthly rental payments on the sale price, if the option was exercised by Mrs. Hilsamer (J.A. 30-32).

Mrs. Hilsamer, who was inexperienced in the rooming house business (J.A. 11-12), agreed to the proposal of the said Gideon. George D. Gideon did thereupon personally prepare a written lease agreement (J.A. 13-14), which was dated September 1, 1959 and signed by Mrs. Hilsamer and the said

Gideon (pl.'s exh. 1; J.A. 38). Among other things, the said Gideon typed the following in the lease:

"IF no default is made in the monthly payment, Lessee has the option to purchase the said property *on rental basis*, for the price of \$23,750.00 Interest to be charged at the rate of 6% per year on the *unpaid balance*." (Italics supplied)

Mrs. Hilsamer entered into possession of said property and has remained in possession until the present time (J.A. 20).

After she had been in the property about two years and five months, to wit, on February 8, 1961 (pl.'s exh. 2), Mrs. Hilsamer wrote to Mr. Gideon enclosing a \$200.00 rent check and stated, in effect, that since she had paid the sum of \$6,000.00 under the "rental option to buy," that she wished to take title to the property and that the remaining balance to be paid monthly would be \$17,000.00. Thereafter on February 10, 1961, by letter (pl.'s exh. 9), the said Gideon advised Mrs. Hilsamer that "taxes, license, insurance and interest of 6% is to be charged against the unpaid balance." He then stated in the letter as follows:

"The purchase price was to be \$23,000.00, \$23,750.00 the new balance after the monthly just received is \$21,983.02. Now there is the cost of making settlement at the Title Company which you will have to pay, also some agreement must be made as to how you are going to pay the balance due."

This statement was made by him even though the lease itself says:

"Lessee has the option to purchase the said property on a rental basis, etc." (Pl.'s exh. 1; J.A. 38)

She attempted to see him several times thereafter, but was unsuccessful (J.A.16-17), and she then contacted counsel who wrote the said Gideon September 25, 1961, requesting the said Gideon to contact said attorney (pl.'s exh. 6). A reply was received (pl.'s exh. 7) stating in effect that all that was necessary was for Mrs. Hilsamer to obtain a first trust from one of the loan companies and that the said Gideon would carry any second trust that was necessary. Thereafter Appellant made

application to the Perpetual Building Association in Washington, obtained a commitment for a \$14,000.00 loan (pl.'s exh. 8). The attorney for Mrs. Hilsamer then prepared a sales contract in the usual form used in the District of Columbia, calling for a total sale price of the property in the sum of \$23,750.00, showing that a \$2,000.00 deposit had been placed with said attorney and contained a provision as follows:

"Purchaser to receive credit for sums heretofore paid under written agreement between parties, dated September 1, 1958, at the rate of Two Hundred Dollars (\$200.00) per month to October 1, 1961, or Seven Thousand, Four Hundred Dollars (\$7,400.00)" (pl.'s exh. 3)

Original and one copy was signed by Appellant and was forwarded to the said Gideon October 7, 1961 (pl.'s exh. 4). The sales contract was returned unsigned by the said Gideon with the provision concerning credit to be received by the Purchaser at the rate of \$200.00 per month, scratched out, as shown by Plaintiff's Exhibit 3.

Appellant paid the monthly rental payments through October, 1961 (See Trial Court Findings of Fact #3), but being unable to reach a satisfactory arrangement with Mr. Gideon, she then stopped the monthly payments and filed suit in the lower court to enforce her option rights. Thereafter the Appellee below filed suit in the Landlord and Tenant Branch of the Municipal Court of the District of Columbia for possession of the property for nonpayment of rent, and as a result, a stipulation was entered into between the parties providing for the payment of rent pending the litigation without waiver of rights on either side. The rent was current as of the date of the hearing below. (J.A. 20)

The Trial Court in its Findings of Fact #2 stated that if there was no default in the payments required to be made by the Appellant, she had a right and option to purchase the property "On a rental basis for the sum of \$23,750.00 with interest on the unpaid balance." In said Findings, the Court also found that the Appellant in the lease agreement had agreed to procure a public liability insurance policy in limits of \$10,000.00 and

\$20,000.00 to protect herself and the said Gideon, and provide him with a certified copy. However to the contrary, Findings of Fact #3 of the Trial Court was as follows:

"Plaintiff, according to the ledger of the defendant paid rent to and including October 1961, and although not paid on the day the same was due, *these payments were acquiesced to by Mr. Gideon as a deviation.* Plaintiff did not pay the liability insurance premiums for 1958, 1959, 1960 and 1961, nor did she pay the taxes and fire insurance for 1958, nor the taxes for 1959, 1960 and 1961. *But she was under no contractual obligation to do so. (Italics supplied)*

The Court then went on to say (Findings of Fact #5):

"Plaintiff admits she did not pay the liability insurance, but claims Mr. Gideon agreed to pay them for her without reimbursement at the time, but probably to be made at sometime later. The Court cannot give credit to this in view of the fact that the defendant in his ledger, which has not been impeached, and the entries of which were made before this controversy, charged her with the liability premiums."

Thus in view of the above, the Court found by one finding that the Appellant was under no contractual obligation to pay liability insurance premiums, and then found that although the Appellant claimed that Mr. Gideon agreed to pay such premiums without reimbursement at the time that it could not give credit to this view inasmuch as the Appellee in his ledger had entries to the contrary which charged her with the liability policy premiums.

Further in Findings of Fact #10, the Trial Court found the contract to be "ambiguous" especially when read in the light of the advertisement that was the inducement for the Appellant to contact Mr. Gideon in the first place. Findings of Fact #10 also stated that it was difficult for the Court to expect that the owner intended to sell the property on what would amount to an installment basis unless the rent was large enough to include interest on the running balance plus insurance and taxes. Again,

it will be noted that in Findings of Fact #3, the Appellant was under no contractual obligation to pay taxes or insurance.

Findings of Fact #11 of the Trial Court was to the effect that tender by the Appellant was insufficient in that no cash was tendered but instead a sales contract and commitment from Perpetual was tendered.

Findings of Fact #12 states that the commitment from the Building and Loan Association was for \$14,000.00 and, in addition, the sales contract called for \$2,000.00 cash at the time of conveyance. Thus a total of \$16,000.00 cash at the time of settlement was offered in the sales contract plus the giving of any second trust that might have been necessary under the circumstances. In Findings of Fact #12 it is stated that there was no evidence that the Appellee or anyone else was willing to lend on a second trust for the difference on the specific terms set forth in the proposed contract. This is directly contrary to the letter of the Appellee, George D. Gideon, dated September 21, 1961, introduced in evidence as Plaintiff's Exhibit #7 wherein the said Gideon stated:

"All that is needed to get the deed to the property at 30 6th Street, S. E. Is to go to one of the loan companies, and get a first trust, on the property, and I will carry a second trust on the property. As soon as you can get a commitment for a first trust, let me know Then have the Title Co. make settlement."

The Court made the following Conclusions of Law:

1. "The contract sued on is so ambiguous and uncertain as not to be susceptible of specific performance."
2. "Even if there is no ambiguity by evidence outside of the record which has not been established, the tender on the basis made is inadequate."
3. "That the plaintiff is in default of her commitments under the contract which would deprive her of her standing to seek the aid of a Court of Equity."
4. "That the complaint be dismissed."

Thereafter the Court dismissed the complaint below.

STATEMENT OF POINTS

The Court erred in Conclusions as a matter of Law as follows:

1. The contract sued upon is so ambiguous and uncertain as not to be susceptible of specific performance.
2. That tender by the Appellant to purchase the property was inadequate.
3. That the Appellant was in default of her commitments under the contract which would deprive her of her standing.
4. That the complaint would be dismissed.

SUMMARY OF ARGUMENT

I.

The contract of September 1, 1958, between Appellant and George D. Gideon, was drawn by him personally. Reasonable construction of the wording of the contract, coupled with the statements of inducement of Mr. Gideon to the effect that at the option of Appellant, rent paid by her under the contract would be applied to the purchase price of the property, created a contract capable of being specifically performed by the said Gideon, or his personal representative.

II.

The wording of the contract dated September 1, 1958, is ambiguous in respect to Appellant's option rights and allowances of credit for rent payments made by her in so far as the purchase of the property by her is concerned. Inasmuch as the said Gideon drew the contract personally, such ambiguities in the light of all the evidence in the case should be construed in favor of the Appellant.

III.

The Trial Court concluded that the Appellant was in default in her commitments under the contract to the extent of depriving her of her standing to seek the aid of an Equity Court. It is submitted that inasmuch as the Trial Court found that the Appellant did not pay the liability premiums, taxes and fire insurance, but was under no contractual obligation to do so (Findings of Fact #3), and further, when the Court found as a findings (Findings of Fact #3) that even though some of the monthly rental payments were not paid promptly, such payments were acquiesced to by Mr. Gideon as a deviation, that it was improper to conclude that as a matter of law that the Appellant under the circumstances was in default in her commitments under the contract.

ARGUMENT

I.

In this case Appellant, an inexperienced person in the rooming house business (J.A. 11-12), was induced through a newspaper advertisement to contact the Appellee below in the belief that she might purchase a business and property "like rent" (J.A. 11). This belief on her part was further substantiated by her subsequent conversation in dealing with the Appellee, all of which resulted in a lease agreement being signed by the parties containing an option running to the lessee to permit her to purchase the property in question on a rental basis and on a basis wherein she was to receive credits on rental theretofore paid. (Pl. Ex. 1; J.A. 38)

Appellant testified at the trial that before signing the lease option agreement she was assured by the Appellee that she would get credit for all rentals paid, if she subsequently decided to purchase the property (J.A. 12-13). This testimony was supported by another witness to whom the Appellee made similar verbal statements. (J.A. 30-32) If the written contract itself is ambiguous and was prepared personally by the Appellee, certainly any

ambiguities should be construed in favor of the Appellant. Likewise any statements proven to have been made by the Appellee to induce the Appellant to sign the lease should be considered part of the contract.

Thus it is the position and claim of the Appellant that in the light of the lease agreement drawn by Appellee personally, the inducements made by him for the Appellant to sign, a reasonable interpretation of ambiguous statements in favor of Appellant, and uncontradicted testimony supporting her position all certainly permit specific performance to the extent of permitting the Appellant to purchase the property for the sum of \$23,750.00, on terms providing for credits for rental paid to date of exercising the option, plus her offer to pay \$16,000.00 cash at date of settlement, with the agreement of the Appellee to take back a second trust, if one was necessary.

II.

It is uncontradicted that the lease dated September 1, 1958, between the parties was drawn by Appellee Gideon personally (J.A. 13-14). It is likewise uncontradicted that he made certain verbal statements to Appellant prior to the signing of the lease agreement, to the effect that if she decided to exercise her option to purchase the property, she would get credit for the sums theretofore paid as rent. This was her testimony supported by the testimony of witness Jackel. (J.A. 12-13, 30-32) Furthermore, the letter of the Appellee to Appellant dated February 10, 1961 (pl.'s exh. 9), shows that he intended to give her credit for amounts paid as rent except that he attempted to charge her interest contrary to their agreement.

In view of the foregoing, it is submitted that there is ample evidence to justify construction of the whole contract, verbal and written, in favor of the Appellant, as claimed by her.

III.

While the rental contract provided that if no default was made in the monthly payments the Appellant had a right to exercise her option to purchase, the mere fact that some payments were not made promptly but were eventually paid and accepted by Appellee over a period of two years and five months (Findings of Fact #3) along with the findings of the Trial Court that such payments were acquiesced to by Appellee Gideon as a deviation (Findings of Fact #3), would not be cause for the Trial Court to find that the Appellant was in default of her commitments under the contract which would deprive her of her standing to seek the aid of a Court of Equity.

CONCLUSION

It is respectfully submitted that:

I.

The Trial Court erred in its Conclusions of Law especially in light of its Findings of Fact #3, and the uncontradicted testimony of Appellant concerning her option to purchase rights as made verbally by Appellee at the time she was induced to sign the contract.

II.

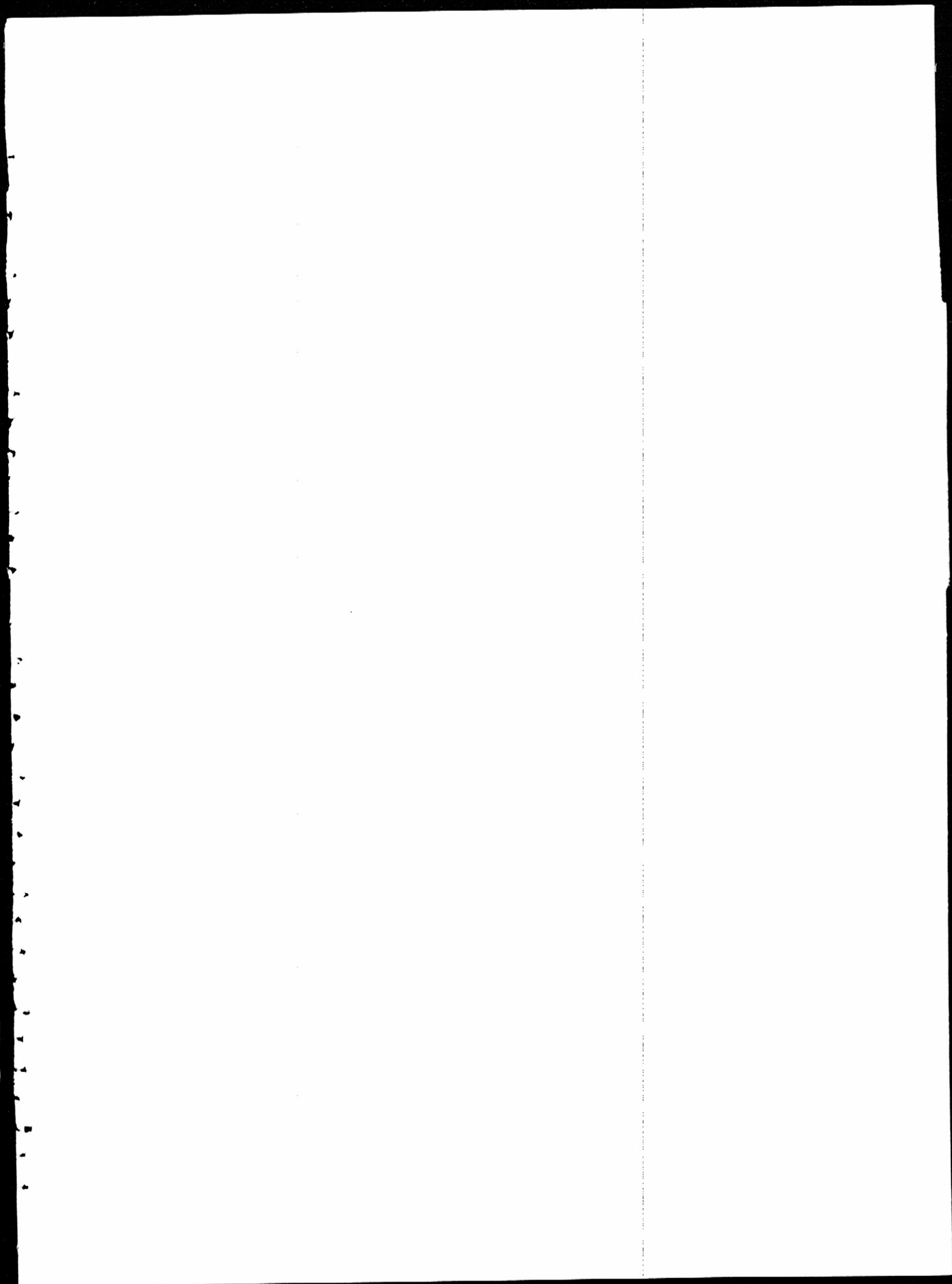
The Appellant should be permitted to purchase the property mentioned in the contract of September 1, 1958, for the sum of \$23,750.00, and receive credit for sums paid as rent, plus payment by her of such cash amount as may be necessary to complete the purchase price.

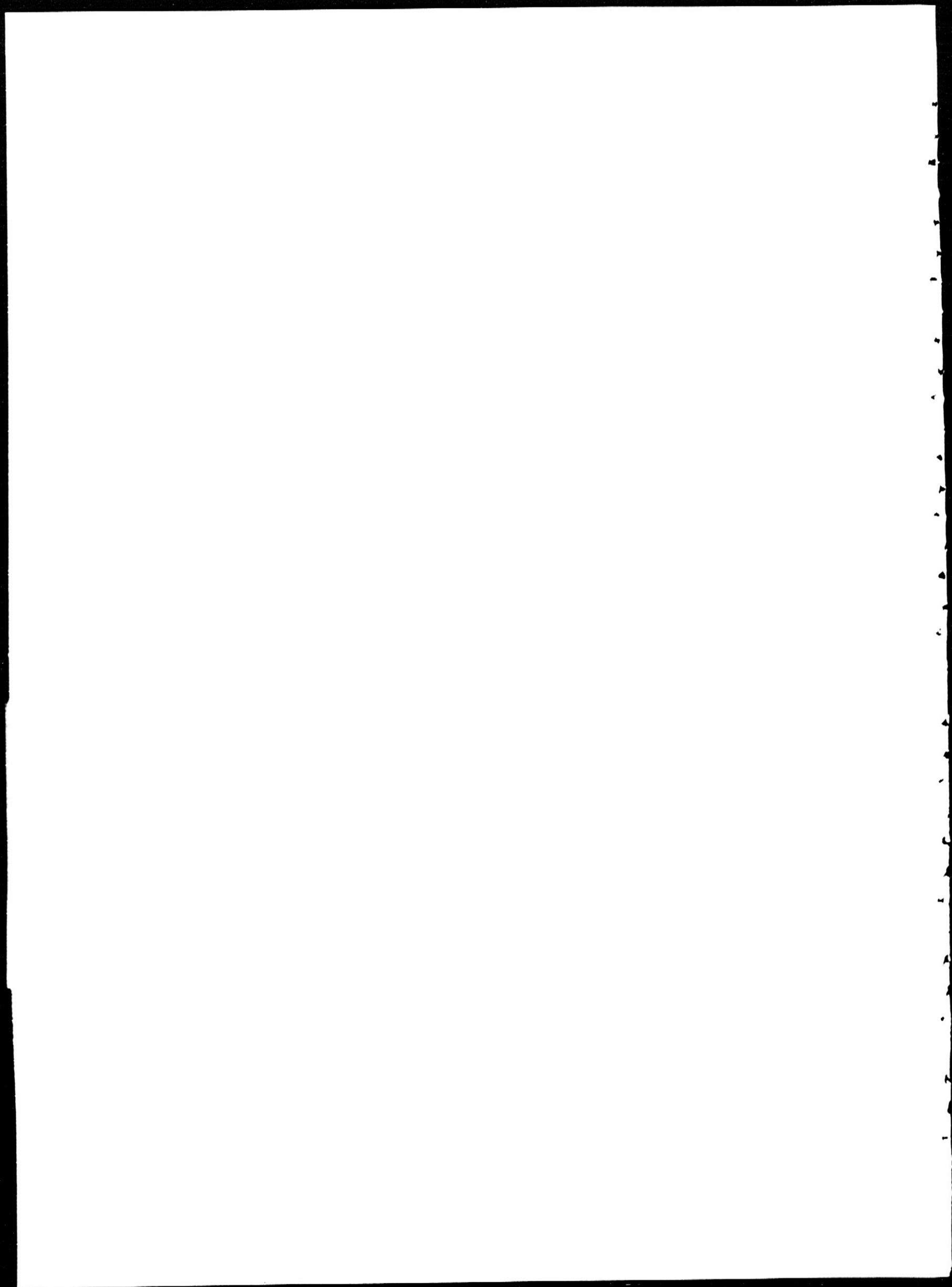
Respectfully submitted,

CHARLES H. QUIMBY

650 Warner Building
Washington 4, D. C.

Attorney for Appellant





(i)

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JOINT APPENDIX

[Filed June 8, 1962]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LOUISE HILSAMER,

Plaintiff,

vs.

GEORGE D. GIDEON,

Defendant.

Civil Action No. 3737-61

June 7, 1962

PRETRIAL PROCEEDINGS

Action for specific performance of contract to sell realty and for damages for breach of contract.

UNDISPUTED FACTS:

Under date of Sept. 1, 1958, P Hilsamer, as lessee, and D Gideon, as lessor, entered into a written, monthly tenancy agreement of premises 30 6th St., S.E. in the District of Columbia, for the sum of \$200 a month, payable in advance on the first day of each month, P to carry on therein a licensed rooming house.

Said agreement further provided that the lessee should pay the water rent, gas and electric bills as they came due.

Said agreement provided further, among other things:

"The lessee covenants and agrees to procure an owners, Landlord and tenant Liability policy to protect herself and the lessor with limits of \$10,000 and \$20,000 and to provide the lessor with a certificate of said policy. The lessee covenants and agrees that she will at her own expense comply with all rules, regulations, motions and statutes both of common law and such as may be issued by the United States Government, District of Columbia, or

any of the officers, agents, Boards, or commissions thereof and the lessor shall not be required to do any act, or incur any expenses occasioned by compliance with such orders, rules, or regulations in order that the tenant may conduct the business of a licensed tenement or rooming house. Tenant is to make and pay for all repairs. If no default is made in the monthly payment, Lessee has the option to purchase the said property on rental basis, for the price of \$23,750 interest to be charged at the rate of 6% per year on the unpaid balance."

P entered into the possession of premises 30 6th St., S.E. and is still in possession thereof.

P made payments to D and D paid certain charges in connection with the property.

Some time in 1961, P informed D in writing that she wished to exercise her option to purchase the property. The parties disagreed as to the amount of the purchase price to be paid.

P filed this action for specific performance on Nov. 15, 1961. P stopped her payments to D, the last payment being made Oct. 3, 1961.

On March 2, 1962, D filed in the Municipal Court of the District of Columbia L & T No. 15717-62, for possession of the premises. A stipulation dated April 3, 1962 was filed in the Landlord and Tenant's case, providing for payment of \$250 per month by Hilsamer to Gideon, in lieu of bond, the lessor agreeing to take no further action to prosecute the suit for possession, and neither party waiving any rights under the agreement of Sept. 1, 1958.

PLAINTIFF contends that she executed the written agreement of Sept. 1, 1958, upon the representation by D and oral agreement of the parties that if and when she exercised her option to purchase the property for the sum of \$23,750, her monthly rental payments of \$200 would be applied on the purchase price, interest at 6% to run on the unpaid balance from the date of exercise of her option; that as of her

notice of exercise of option, she had paid \$7645; that pursuant to the terms of said agreement, the amount remaining to be paid on the purchase price of the property was \$16,350, which she was ready, willing and able to pay; that she tendered a written form of sales contract to D Gideon reciting the purchase price of \$23,750 less a credit of \$7,400 on said principal price and providing specific terms of purchase, as set forth in P's pretrial exhibit No. 2; that D failed and refused to comply with the terms of P's option to purchase.

P further asserts, that if there be any ambiguity in the option agreement of Sept. 1, 1958, it should be construed against D, who prepared said agreement, and who is a person experienced in real estate matters.

P asserts that she is still ready, willing and able to purchase the property in accordance with the option agreement of Sept. 1, 1958, and makes tender of performance of said option agreement.

P further asserts that she has spent certain sums in improvement of the real estate, namely:

Painting	\$ 225.00
Gutters	25.00
Shades	45.00
Beds	60.00
New flooring	50.00
Ice box	35.00
Oil burner repairs	45.00
5 linoleum rugs	75.00
Furniture	250.00
Roof	25.00
Miscellaneous improvements	<u>200.00</u>
Total	\$1,035.00

P asks judgment (1) for specific performance of the option agreement by D; (2) a money judgment against D in the amount of \$1,035.00 to reimburse P for improvements by her to the property; and (3) reasonable attorney's fees incurred in this action and defense of the L & T case, together with costs of this action.

DEFENDANT denies that P is entitled to any of the relief prayed.

D contends:

(1) P is not entitled to exercise of the option granted by the agreement of Sept. 1, 1958, she having made defaults in her monthly payments prior to her purported exercise thereof, and P further having failed to pay liability insurance, water rent, and license fees as required by said agreement; that P made payments to D in the total amount of \$7590, as itemized in Exhibit A attached hereto.*

(2) P has failed to make tender of the purchase price provided for by said option agreement. D contends that under the terms of said agreement, the purchase price of the property is \$23,750 as of the date of the exercise of the option. Alternatively, D claims, the purchase price was to be \$23,750 less the payments made by P to D for rent, applying such payments to principal and interest at 6% on each monthly balance from Sept. 1, 1958.

(3) That the contract is incapable of being specifically performed in that the option agreement is ambiguous, uncertain, and there was no real meeting of minds between the parties.

(4) If the Court hold the option capable of specific performance, P is required to make tender of all interest, meaning interest at 6% on monthly unpaid balances from Sept. 1, 1958.

(5) As to the claim for reimbursement of amounts spent by P for improvements to the property, D denies liability therefor on the ground that the agreement of Sept. 1, 1958 provides that the lessee shall make and pay for all repairs, and that the lessee would do all that was necessary to comply with all rules, regulations and statutes and orders of the U.S. or D.C. government in connection with the operation of the rooming house and tenement; and that as to any other improvements or repairs P may have made of the property, she was a volunteer.

(6) D denies any liability to P for her attorney's fees either in this action or in the L & T suit, on the ground that this action is

* D asserts that he advanced on behalf of P sums totalling \$1317.20, as shown in D's Exhibit A attached hereto and made a part hereof.

without merit and P's failure to pay rent resulted in the L & T action.

Counterclaim:

D counterclaims against P for rent due on the premises in issue in the amount of \$200 per month since Oct. 1, 1961, less any payments of \$250 per month made by P pursuant to the stipulation filed in the L & T action, with interest on each monthly installment of \$200 from due date.

Answer to Counterclaim:

P denies any liability to D on the counterclaim, asserting that she tendered exercise of her option to purchase in writing on Feb. 8, 1961, and on the basis of all the other facts asserted with reference to her complaint in the principal action.

STIPULATIONS:

Facts under "UNDISPUTED FACTS".

It is stipulated that the following may be admitted without formal proof of authenticity, subject to all other objections:

P's No. 1 - agreement of Sept. 1, 1958

P's No. 2 - proposed sales contract dated Oct. 4, 1961

P's No. 2a - letter of transmittal

P's No. 3 - carbon copy of letter dated Feb. 8, 1961 from P to D

P's No. 4 - letter dated Sept. 12, 1961 from D to P

P's No. 5 - letter dated Sept. 25, 1961 from P's attorney to D

P's No. 6 - reply of D on reverse side of P's No. 5

P's No. 7 - commitment from Perpetual Bldg. Assoc.

All records of Perpetual Bldg. Assoc. with reference to proposed loan on premises 30 6th St. S.E.

D's No. 1 - lessor's account book on premises 30 6th St., S.E. -
SUBJECT TO CHECK OF FIGURES BY P.

Counsel agree to exchange within 2 weeks the names and addresses of all witnesses known to them, including expert witnesses, exclusive of impeachment or rebuttal witnesses (filing a copy of said list

with the Clerk of the Court), and if they learn of any additional witnesses prior to trial, will exchange the names and addresses promptly.

The Examiner has requested counsel to come to the trial with the maximum authority to settle the case which will be allowed them by their principals.

Trial attorneys: For Plaintiff - Charles H. Quimby
 For Defendant - Herman Miller

/s/ Elizabeth Buntin
 Asst. Pretrial Examiner

Attorneys:

/s/ Charles H. Quimby For Plaintiff

/s/ Herman Miller For Defendant

DEFENDANT'S EXHIBIT NO. A

STATEMENT OF RECEIPT AND EXPENSES 30 - 6th Street, S. E.,
 COMMENCING SEPTEMBER 1, 1960

<u>DATE PAID</u>	<u>AMOUNT PAID</u>	<u>ADVANCED BY GIDEON</u>
9/7/58	200.00	Water \$11.20
9/7/58		Taxes \$186.63
10/7/58	\$200.00	
10/7/58		Fire Ins. 95.00
11/12/58	\$100.00	
11/20/50	\$100.00	
11/20/58		Pub. Lia. Ins. 41.58
12/19/58	\$100.00	
12/27/58	40.00	

740.00

1959

<u>DATE PAID</u>	<u>AMOUNT PAID</u>	<u>ADVANCED BY GIDEON</u>
1/15/59	\$100.00	
1/25/59	\$100.00	
2/4/59	\$100.00	
2/12/59	\$100.00	
3/9/59	\$200.00	
4/5/59	\$200.00	
5/6/59	\$200.00	
6/3/59	\$215.00	
7/7/59	\$200.00	
8/8/59	\$210.00	
9/3/59	\$100.00	
9/15/59		Taxes \$258.06
9/15/59	\$100.00	
9/15/59		Personal Property Tax \$10.00
10/5/59	\$200.00	
10/6/59		Liability Ins. \$41.55
11/5/59	<i>150.00</i>	
11/13/59	\$50.00	
12/3/59	\$100.00	
12/8/59	\$100.00	
	<u>2425.00</u>	

1960

1/11/60	\$200.00
2/6/60	\$200.00
3/6/60	\$200.00
4/4/60	\$100.00
4/6/60	\$100.00
5/4/60	\$200.00
6/6/60	\$200.00
7/8/60	130.00

<u>DATE PAID</u>	<u>AMOUNT PAID</u>	<u>ADVANCED BY GIDEON</u>
7./2/60	\$ 70.00	
8/5/60	\$100.00	
8/9/60	\$100.00	
9/1/60	\$200.00	
9/15/60		Property Taxes \$10.00
9/15/60		Real Estate Taxes 258.00
9/15/60		Liability Insurance \$32.34
9/15/60		Finance \$25.00
10/7/60	225.00	
11/4/60	200.00	
12/9/60	200.00	
	<u>2425.00</u>	

1961

1/10/61	200.00
2/9/61	200.00
3/7/61	100.00
3/13/61	100.00
4/6/61	100.00
4/11/61	100.00
5/4/61	100.00
5/5/61	50.00
5/16/61	50.00
6/8/61	100.00
6/12/61	100.00
7/11/61	100.00
7/15/61	100.00
8/9/61	100.00
8/16/61	100.00
9/8/61	100.00
9/15/61	100.00

<u>DATE PAID</u>	<u>AMOUNT PAID</u>	<u>ADVANCED BY GIDEON</u>
9/15/61		Finance \$25.00
9/15/61		Liability Ins. \$32.34
9/15/61		Taxes \$280.50
9/15/61		Personal Property Tax 10.00
10/3/61	<u>\$200.00</u> 2000.00	

No payments since 10/3/61

Total payments \$7590.⁰⁰

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

1

Washington, D. C.
March 6, 1964

The above-entitled cause came on for trial before the HONORABLE DAVID A. PINE (And a Jury) at 10 o'clock a.m.

* * * * *

3

LOUISA B. HILSAMER

the plaintiff, appearing as a witness in her own behalf, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. QUIMBY:

Q. What is your full name, please? A. Louisa B. Hilsamer.

* * * * *

5

Q. Yes, just answer the question. I will ask you again. Did you know Mr. George Gideon? A. Never before, no.

Q. Well, did there come a time when you knew him? A. Yes, sir.

Q. And how did that come about? How did you happen to get acquainted with Mr. Gideon? A. Well, in the Sunday Evening Star there was a newspaper ad, rooming house for sale —

* * * * *

6

THE COURT: * * * Mr. Miller, have you seen this advertisement in the Star?

7

MR. MILLER: No, Your Honor, but I am sure —

THE COURT: Will you look at it now and maybe we can stipulate that it may remain and this gentleman can go about his business.

MR. MILLER: Your Honor, I have no objection to Mr. Quimby reading the ad into the record.

THE COURT: First, ask her if that is the one she looked at.

* * * * *

MR. QUIMBY: She says that is the ad, Your Honor.

MR. MILLER: I stipulate it is, Your Honor.

THE COURT: You stipulate that the ad that he is about to read

in the record is the one she looked at?

MR. MILLER: Yes, and the one that Mr. Gideon had inserted in the paper.

THE COURT: Will you read it in the record, please?

MR. QUIMBY: Yes, sir.

8 THE COURT: Go slowly. I want to be sure about this.

MR. QUIMBY: "Rooming house owner has several good properties. He will sell business and property like rent. 3423 Oakwood Terrace, Northwest, ORDE 2-1898".

* * * * *

BY MR. QUIMBY:

9 Q. Mrs. Hilsamer, you have told us that you saw that ad in the paper. As a result of that ad, what did you do, if anything?

A. Well, I talked Mr. Gideon up and asked him.

THE COURT: Talk slowly, please.

THE WITNESS: I called Mr. Gideon on the telephone and I told him — I asked him I know a lot of things about repairing houses —

THE COURT: I don't understand her. Can't you speak more slowly. I know you are full of it but we have never heard it before, at least I haven't. Speak slowly, please. You called up Mr. Gideon and what?

THE WITNESS: And asked him on the phone I would be interested for to see the property, and so this was on a Sunday.

BY MR. QUIMBY:

Q. On a Sunday, you say? A. Yes, sir. And so he says if you have time why don't you come over and we talk about it. So then maybe four or five o'clock in the afternoon I was going in this Terrace place where Mr. Gideon lived.

THE COURT: What place?

THE WITNESS: Terrace Place.

THE COURT: You went over to his home?

10 THE WITNESS: Yes, sir.

THE COURT: All right.

THE WITNESS: And we talked about it. He said, do you know

anything about a rooming house, and I said no, but it is like a big house, you have to clean it up and I will put some people in and I would like to do it.

So he said you have any money and I said no I have no money. But he said, well the house, you have to do a lot of repairs on the house, and I will show it to you and you can pay \$200 a month and the house is \$23,750.

THE COURT: Wait a minute. \$200 a month?

THE WITNESS: 200 a month rent.

THE COURT: Yes.

THE WITNESS: And the house was 23,500 or 23,700, something like this.

BY MR. QUIMBY:

Q. 23,000, you mean? A. Yes, sir.

Q. All right. A. And then you pay a couple of years 200 a month rent, and you be interested, you have to pay the settlement charges, and then I will give you the house, and we taken it away, the 200 a month we will take away from the big sum.

11 THE COURT: Take away the 200 a month from the big sum?

THE WITNESS: Yes.

THE COURT: I didn't understand you, Madam. If you just will speak more slowly. It is important that I hear you.

THE WITNESS: Yes, sir.

MR. MILLER: Your Honor, I am going to have to object to her conversation with him on this point, for two reasons: One, nobody else was present, and she has not at least said so, there will be no corroboration, and then it merged into the written contract.

THE COURT: What do you say about that?

MR. QUIMBY: Well, I am prepared, if Your Honor please, to offer testimony by another witness that he likewise had a conversation with Mr. Gideon shortly after this thing was signed wherein Mr. Gideon stated to him the same thing that he told this lady practically.

THE COURT: Then there will be corroboration.

MR. QUIMBY: Yes, sir.

THE COURT: I will allow that to come in as part of the inducement and perhaps to explain the ambiguity if there is one. It looks as though there is one certainly. Now "take it from the big sum", did you say?

12 And please speak slowly now.

THE WITNESS: The house was 23,750, almost like \$23,750. When I paid 200 a month a couple of years, this will reduce the big bill.

THE COURT: Reduce it what?

THE WITNESS: Reduce the purchase price, right?

THE COURT: The purchase price?

THE WITNESS: Yes, sir.

THE COURT: All right.

THE WITNESS: Well, I had to pay all water bills and stuff like this.

* * * * *

BY MR. QUIMBY:

Q. Now after that, what did you do, if anything? A. Well, he said can you give me at least \$200 down.

THE COURT: Give you what?

THE WITNESS: Can you give me \$200 down when you go in the house. I said yes, I will get the \$200.

13 Then he said I will prepare in typewritten the contract and then you take the contract and you think it over and when you have the \$200 then you bring it back to me and then we will sign it. Well, a gentleman friend who I know, I showed the contract to him.

BY MR. QUIMBY:

Q. Before you get into that, did there come a time when he prepared such a contract? A. Yes, sir.

MR. QUIMBY: May I have this marked for identification, please?

DEPUTY CLERK: Plaintiff's No. 1, for identification.

(Plaintiff's Exhibit No. 1 was
marked for identification)

BY MR. QUIMBY:

Q. Mrs. Hilsamer, I hand you what has been marked for identification as Plaintiff's Exhibit No. 1 and ask you if you can identify that paper for us? A. Yes, sir.

Q. As being what? A. As the contract Mr. Gideon typed out in his dining room and I signed it and Mr. Gideon signed it.

14 Q. That is your signature at the bottom? A. Yes, sir.

Q. Did you see him sign that? A. Yes, sir, and we signed on the same table.

* * * * *

MR. QUIMBY: I would like to offer this in evidence.

MR. MILLER: It is marked at pre-trial, Your Honor. I have no objection.

THE COURT: It will be received.

* * * * *

BY MR. QUIMBY:

Q. Now, Mrs. Hilsamer, in reading this Plaintiff's Exhibit No. 1 I find this language: "The lessee covenants and agrees to procure as owners, landlord and tenant liability policy to protect herself and the lessor with limits of \$10,000 and \$20,000." Now, did you ever apply for such a policy? A. No, I don't because —

* * * * *

15 Q. Well, did you obtain such insurance? A. No, sir. Mr. Gideon told me when we have to take this license out and the insurance, this

16 have to be in my name. Everything comes in my name. Then the inspector will come on the house, because the house was not in perfect shape. Under the new quota of rooming house operating, everything have to be just like this. And when it comes a new name, then they come around to find this fault and this fault and this fault. And so it was with the license also.

Q. Is that the reason you did not get the insurance? A. Yes, sir.

Q. With reference to the license in whose name did that license remain? A. In Mr. Gideon. The same thing. Because he say if you put

out the license and go to District Court down there and get a new license, it will be in my name, and the inspector comes around and finds all kind of faults. So every month I paid the license —

Q. You say you paid the license? A. He called me up and he said, Mrs. Hilsamer, the license are here, you owe me \$25. I send the \$25 by check and then he sends me through the mail the license and I put it up.

THE COURT: Wait, sent you through the mail what? What did he send you through the mail?

17 THE WITNESS: The license, and then I put it up in the house.

THE COURT: All right.

BY MR. QUIMBY:

Q. You say you paid him each year for that? A. Yes, sir. It was \$25.

* * * * *

18 THE COURT: * * * That might supply the corroboration, Mr. Miller.

MR. MILLER: Yes, it would, Your Honor.

BY MR. QUIMBY:

Q. Mrs. Hilsamer, did you then start paying the rent in accordance with this agreement? A. Yes, sir.

Q. Do you know how long you paid the rent? A. Well, I paid I think to 61, or maybe say 59, I couldn't say exactly, but I hold the rent because I called Mr. Gideon up many times because I want the house in my name, and he always said —

Q. Now, wait. Did there come a time after you went in there when you decided that you wanted to take the house in your name? A. Yes, sir.

Q. Do you remember about when that was? A. I think it was in February 1959 or February of 61.

Q. In what part of 61? A. February.

Q. February? A. Yes.

MR. QUIMBY: Could I have this marked for identification, please?

* * * * *

19

BY MR. QUIMBY:

Q. I hand you what has been marked for identification as Plaintiff's Exhibit No. 2 and ask you if you can tell us what that is? A. This is the letter that I wrote to Mr. Gideon.

* * * * *

MR. QUIMBY: I would like to offer this.

MR. MILLER: No objection, Your Honor. It was stipulated to at pre-trial.

* * * * *

THE COURT: All right. It will be received.

* * * * *

20

THE COURT: She says that Mr. Gideon has paid the license fees.

MR. QUIMBY: He paid them and she was supposed to reimburse him.

THE COURT: She doesn't say so. Says it was to be increased by that amount.

MR. QUIMBY: I think that was due. I think there was one due about that time.

THE COURT: It isn't what it says. All right, it will be received.

BY MR. QUIMBY:

* * * * *

Q. After you sent this letter to Mr. Gideon, what did he do if anything about agreeing to sell the property to you? A. Well, he told me I should come over to his house and we talk about it, and he said I don't, maybe didn't understand well what he meant. * * *

* * * * *

21

Q. Then he told you you didn't understand the contract, is that what you said? A. Yes. So I go over there.

* * * * *

THE WITNESS: He told me to come to his house.

THE COURT: Yes.

THE WITNESS: He said he wants to show me the books, maybe I did not understand him about the contract.

THE COURT: Yes.

THE WITNESS: So I was going twice to his house. One time his wife was sick and he was not interested to talk business to me. And one time he told me he wanted to have his son around but his son wasn't there either. So both times I go away with nothing, no talk, no nothing, and then I took a lawyer to file a suit one way or the other.

* * * * *

22

BY MR. QUIMBY:

Q. Mrs. Hilsamer, I hand you what has been marked for identification as Plaintiff's Exhibit No. 3 and ask you if you can identify that for us? A. Well, this is —

Q. Can you identify that paper? A. This is a deposit paper of money, and this is my title underneath.

THE COURT: Deposit paper?

MR. QUIMBY: It is a sales contract for the property, if Your Honor please.

THE COURT: Is it something she signed?

MR. QUIMBY: Yes, she signed it.

THE COURT: Is that your signature?

MR. QUIMBY: She said that is her signature.

THE WITNESS: Yes, sir.

MR. QUIMBY: I would like to offer this in evidence.

MR. MILLER: Your Honor, we stipulated to this at the pre-trial. I have no objection.

23

THE COURT: Very well, it will be received.

MR. QUIMBY: I would offer this in evidence then, Your Honor.

THE COURT: It will be received.

(Plaintiff's Exhibit No. 3 was
received in evidence.)

THE COURT: Now I don't know what is being received. I notice part of this has some red pencil marks. Is it being received with that stricken out, or what?

MR. QUIMBY: That is the way it was delivered to the defendant

through my office, Your Honor. And it was returned to him by me unsigned.

THE COURT: It was stricken out by you then?

MR. QUIMBY: Yes, sir.

THE COURT: Is that so. Will you stipulate to that?

MR. MILLER: Well, Your Honor, I don't know because my client is not here to say yes or no but I am willing to accept Mr. Quimby's statement on that.

THE COURT: All right.

* * * * *

24 THE COURT: All right. Then it was sent — it is stipulated it was sent, then, to Mr. Gideon with a portion crossed out in red pencil.

MR. QUIMBY: Yes, sir.

MR. MILLER: Yes, sir.

THE COURT: All right.

MR. QUIMBY: Then he returned it to me. I think that that is obvious because I have it here now.

MR. MILLER: I will so stipulate, Your Honor.

* * * * *

MR. QUIMBY: This was my letter of transmittal of the sales contract. That is just a copy of the letter. It is dated October 7, 1961, and I recite the fact —

THE COURT: Do you want to offer it in evidence?

MR. QUIMBY: Yes, I would like to offer it.

THE COURT: Any objection?

MR. MILLER: No objection.

THE COURT: It will be received. Have it marked.

DEPUTY CLERK: This will be Plaintiff's Exhibit No. 4.

25

(Plaintiff's Exhibit No. 4 was marked for identification and received in evidence.)

MR. QUIMBY: Will you mark this for identification, the next number?

DEPUTY CLERK: Plaintiff's Exhibit No. 5 for identification.

(Plaintiff's Exhibit No. 5 was marked
for identification.)

BY MR. QUIMBY:

Q. Mrs. Hilsamer, I hand you what has been marked for identification as Plaintiff's Exhibit No. 5, and ask you if you have ever seen that paper before? A. This is Mr. Gideon's handwriting.

Q. Have you seen it before? A. Yes, sir.

Q. Where did you get it? A. I got it in my house.

Q. Well, how did it come to you? A. My mail, sir.

MR. MILLER: No objection, Your Honor. We stipulate this is the handwriting of the defendant.

THE COURT: It will be received.

* * * * *

26 MR. QUIMBY: If Your Honor please, I would like to offer Plaintiff's Exhibits 6 and 7, being a letter on the front of my letterhead, and we have agreed to the handwriting at the top of the letter is not a part of it, neither is the handwriting on the back a part of the exhibit.

THE COURT: It will be received.

* * * * *

BY MR. QUIMBY:

Q. Mrs. Hilsamer, did there come a time in connection with that sales contract that you mentioned, that you would make application for a first trust, did you apply any place to borrow some money? A. Yes, I

27 tried to borrow, I believe, 14 — no, I tried to borrow some money and the bank was willing to give me \$14,000.

Q. What place did you go to, do you remember? A. Perpetual.

Q. Perpetual Building Association here in town? A. Yes, sir.

* * * * *

28 Q. Mrs. Hilsamer, after this application was made at the Perpetual Association, did you continue to remain in the property? A. Yes, sir.

Q. Are you still in the property? A. Yes, sir.

* * * * *

Q. Do you remember whether you were sued in the Municipal Court or not in this case? A. Sued for what?

Q. A landlord and tenant suit. Do you remember that landlord and tenant suit in Municipal Court? A. I was sued for it.

* * * * *

Q. Have you made any payments since you first — A. I made payments all the time.

Q. Up to the present time? A. Yes, sir.

29 Q. And how much have you been paying since that time, do you know?

THE COURT: Since what time?

BY MR. QUIMBY:

Q. Since the time that we filed — A. Seven, eight or nine thousand dollars. I didn't figure it out.

* * * * *

MR. QUIMBY: You don't object to that stipulation about the \$250 payments, do you?

MR. MILLER: Your Honor, we stipulated this suit was filed in landlord and tenant, and under the code and provisions of the rules over there they filed a plea of title claiming that they owned the property, and it was necessary that a bond be posted and then the suit would be transferred here.

So in lieu of a bond we stipulated that without prejudice to the claims and rights of either party, that \$250 could be paid in lieu of a bond which in effect would take care of the current \$200 a month plus \$50 on the arrears that was then due.

30 Is that correct, Mr. Quimby?

MR. QUIMBY: Yes, that is correct.

THE COURT: And that payment has been made since then?

MR. MILLER: Yes, sir, it has.

* * * * *

33

BY MR. QUIMBY:

Q. Mrs. Hilsamer, while you were in the property will you tell His Honor about the utilities such as water, gas and electricity. In whose name were they? A. It was in my name, sir.

Q. And who paid those bills during the time? A. I paid those bills.

Q. You paid the water bill and gas? A. Everything.

34

Q. Up to the time that you decided to buy this place had you kept your rent up from month to month? A. All the time, yes, sir.

Q. Now, about the time when we were talking when they were trying to negotiate with Mr. Gideon for the purchase of this property, did you become in arrears along at that time anywhere? A. No, we owed money back because he didn't want to take the paper for me. That is why I took the lawyer.

Q. You say you held the money back because he wouldn't give you the title? A. Yes. He don't want no title, he don't want to co-operate with me. He tell me every week something else, sometimes on the phone and two times in his house.

* * * * *

35

CROSS EXAMINATION

BY MR. MILLER:

Q. Mrs. Hilsamer, after you had this conversation with Mr. Gideon, I understood you to say in your direct examination that he agreed to prepare this original agreement of September 1, 1958, whereby you would be a tenant at \$200 a month with the option to buy? A. Yes, sir.

Q. And you also said, and if I am wrong correct me, that he left that with you for you to look over? A. I took it with me.

Q. How long did you hold that agreement? A. Oh, two or three hours.

Q. When you got the agreement, did you get it at his house or

did he mail it to you? A. No, I got it back to his house with the \$200, the first payment.

Q. Now, before you made the payment I understood you to say he prepared the contract and gave it to you? A. Yes, sir.

36

* * * * *

Q. Well, before you signed it how long had you had it in your possession? A. Maybe an hour or two hours. Then I lived on 19th Street. I walked from his home to my home, showed it to a friend, borrowed \$200.

Q. Now that is what I want to get back to. When he first gave it to you, he gave it to you, you took it with you and went to your home?

A. Yes.

Q. And you asked a friend about it? A. Yes.

Q. Who was it that you asked? A. Well, it was an employee. I was a governess to a motherless son, and this gent, he works in the Navy Department, and I asked him, showed him the papers, and I asked him if he could loan me \$200.

Q. Did he look at the papers? A. Yes, sir.

37 Q. Do you know what he does in the Navy Department? A. He is a scientist in the Navy Department.

Q. There was nothing to prevent you from going to a lawyer with this paper, was there? A. No, this was pretty clear. I could read it. I understood it.

Q. Then when you showed this man the paper you borrowed the \$200 from him? A. Yes, sir.

Q. And then brought the paper and the \$200 back to Mr. Gideon? A. Yes, sir.

Q. And then paid the \$200 and signed the paper in his — A. Dining room.

Q. And he gave you a copy and he kept a copy. Is that right? A. Yes, sir.

Q. Now you also said, did you not, that you decided to exercise the option to buy the property in February of 1961? A. Yes, sir.

Q. And sent them this letter, your Exhibit No. 2. Is that right?

A. Yes, sir.

Q. Who typed the letter for you? A. Mr. Jackel in the Navy
Department.

* * * * *

Q. My recollection is you said you went to his house twice.

A. Before. Before I ever write this letter.

Q. Well, when did you go to his house? A. Well, he called me up
one time, 7:00 o'clock in the morning one time.

Q. What day was it, what month? A. Oh, sir, I am sorry I
couldn't tell you what month.

Q. This letter is dated February 7. A. It was before I ever wrote
the letter.

Q. How much time? A. Maybe two weeks, three weeks. I mean,
I was there two times in his house.

39 THE COURT: What is this, is this when you were there before
you sent the letter?

THE WITNESS: Yes, I was there before.

THE COURT: Two weeks before or three weeks before?

THE WITNESS: Let's say two weeks.

THE COURT: All right.

BY MR. MILLER:

Q. The first time his wife was sick and he didn't want to talk
business? A. Yes, he had just come home from a walk because he was
a walking man.

Q. And the second time? A. He said he wanted to show me the
books but his son was not home and he didn't feel like it.

Q. Did he show you any books? A. No, sir.

Q. Then since you didn't get together with him then you sent him
this letter? A. Yes, because it seemed like he don't want to cooperate
with me.

Q. After you sent him this letter, did he get in touch with you?

A. I don't think so.

40 Q. He didn't say yes and he didn't say no whether he was going to make the papers for you? A. Well, I don't think so, sir.

Q. Can you tell us why you waited from February 8, after you wrote that letter, until September to do something about it? A. Well, I thought maybe he would change his mind. I mean, who wants to go to court or to a lawyer, it all costs money, and I thought maybe — I was in the right, because I could read, property was so much, option to buy, 200 a month. And I thought by having a paper like this, this is in black and white, and I am on the right side.

Q. But my question is, why did you wait from that time in February until September to do something about it? A. Well, I thought maybe — first of all, I was working in the airport then and I thought maybe he would think it over and we settle it easy, or not in court and stuff like this.

* * * * *

41 Q. When did this happen? A. Well, it was exactly one month before he died because I said —

Q. I am not asking you about that time. I am asking you between the day of February of 1961 when you wrote this letter, and September the 12th, 1961, when he wrote you this letter, did you ever talk to him —

THE COURT: By this letter you mean exhibit what?

MR. MILLER: Exhibit No. 5, which is a letter from Mr. Gideon to her.

THE COURT: I see.

BY MR. MILLER:

Q. Did you ever talk to him between those two dates? A. I talked to him on the phone but he said — I said, "I have to get a lawyer because you don't cooperate with me".

* * * * *

Q. Did you get in touch with Mr. Quimby before you got this letter from him dated September 12, 1961, Plaintiff's Exhibit 5? A. No, I don't
42 think so. I did something afterwards.

Q. Now he says in this letter he talked to a man from an insurance company about getting loans on some of his houses.

* * * * *

Q. Where to go to get a loan? A. No, he didn't say where to go.

Q. Well, did you apply to any places, before you got this letter, to get a loan? A. Well, he said he need some more money so I tried to get to the Perpetual to get the loan on this house.

Q. Then do I understand you to tell us that when you received this letter which is dated September 12, which I have been talking about, you had no discussion with him about getting a loan or trying to raise the money?

* * * * *

A. Well, I saw him many times, Mr. Gideon, also on the street. One time he tried to sell me another house, Harvard Street. So it is not that I did not see Mr. Gideon. We talked once in a while. The most important thing I wanted to get the house in my name because I put so much money in it.

43

Q. Mrs. Hilsamer, isn't it a fact that you were also renting another piece of property from him at another location? A. Yes.

Q. Where was it? A. Harvard Street.

* * * * *

MR. MILLER: 6th Street, Your Honor, 30 6th Street, Southeast.

THE COURT: Was it four or five months after you took that?

THE WITNESS: Well, when I say four or five, I don't want to lie. Let's say five.

THE COURT: All right.

* * * * *

45

BY MR. MILLER:

Q. And then he sent, according to the evidence now, Plaintiff's Exhibit No. 6 dated September the 25th, a letter from Mr. Quimby to Mr. Gideon, and on the back of it appears to be a letter from Mr. Gideon to Mr. Quimby, which is dated September 21, four days before the letter was sent.

Do you know why there is a difference in the dates? Do you have any idea at all? A. I don't know why it has a different date, sir. Anybody can make a mistake in dates. I do sometimes too.

Q. Now, Mrs. Hilsamer, I hand you Plaintiff's Exhibit No. 3, which is the contract that you said you signed, dated October 4, 1961.

That is your signature, is it not? A. Yes, sir.

Q. And do you notice in this contract on both copies there is the typing "the purchaser to receive credit for the sums heretofore paid under the written agreement dated September 1, 1958, at the rate of \$200 per month to October 1, 1961, or \$7,400."

46 And Mr. Quimby has stated that this was scratched out in the red, before it was sent to Mr. Gideon.

Do you know why that was sent out? A. No.

* * * * *

Q. Did you discuss it with Mr. Quimby? A. I don't think so.

Q. Was it scratched out before you signed it?

* * * * *

THE WITNESS: I couldn't tell you, sir.

* * * * *

BY MR. MILLER:

Q. Now, did you give Mr. Quimby on October 4, or prior, \$2,000?

A. Yes, sir.

Q. In what form? A. I believe in a check.

47 Q. Whose check was it? A. Well, this was the gent I worked for.

Q. What gent? A. Mr. Jackel.

THE COURT: Mr. Jackel's check?

THE WITNESS: Yes, sir.

THE COURT: For \$2,000?

THE WITNESS: Yes, sir.

BY MR. MILLER:

Q. And who was the check made payable to? A. This I couldn't tell you. I was not there.

Q. Now this contract says that Mr. Quimby was to hold the entire deposit? A. Yes, sir.

Q. Do you know whether or not he cashed that check? A. I don't think he would cash it.

MR. QUIMBY: If Your Honor please, I can state that I did cash the check and did hold the money.

This lady doesn't know, but I would state that to the court as a fact.

MR. MILLER: I didn't know whether she did and I will accept Mr. Quimby's statement on that, Your Honor.

48 THE COURT: All right.

Then you received a check and cashed it and held the money.

MR. QUIMBY: Yes, sir, for \$2,000, as shown on the contract.

BY MR. MILLER:

Q. Now, Mr. Gideon, obviously, sent that back to Mr. Quimby, unsigned.

Did you ever have any discussion with Mr. Gideon, or know why he sent it back unsigned? A. No, sir.

Q. At the time that you signed this you had possession of the property? A. Yes, sir, I still have.

Q. Were you living there? A. No, sir.

Q. Where were you living? A. It was on Irving Street, Northwest.

* * * * *

49 Q. Now after this application was made with the Perpetual Building Association, which is contained in Plaintiff's Exhibit No. 8, a commitment was apparently given by the Perpetual to Mr. Quimby, dated October 19, for \$14,000, subject to the sale being \$23,750, with \$9,400 minimum cash, subject to painting all exterior wood and metal work and furnishing a satisfactory release of license, a loan fee to be one per cent plus the appraisal and inspection, payable \$100.31 a month with interest at six per cent.

Did you get an estimate of what it would cost to paint all the exterior wood work and metal work?

* * * * *

A. No. * * *

* * * * *

50 Q. The payments you made of these \$200 required by Plaintiff's Exhibit No. 1 in the sum of 200 a month, did you always pay those payments on the first of the month? A. No, sir. First of all, I moved in on the 7th and he was never mad if I was a payment maybe the 15th or the 7th, never, because he knowed this was hard in this house because it was empty when I took it over.

Q. On October the 7th, 1958, did you pay a premium of \$95 for fire insurance?

* * * * *

51 THE WITNESS: I couldn't say yes or no.

* * * * *

THE COURT: You did not?

THE WITNESS: No.

BY MR. MILLER:

Q. On November 20, 1958, or prior, did you pay public liability insurance for the sum of \$41.58? A. No, sir. * * *

Q. Now, in December 1958, isn't it a fact that you only paid \$100 and not \$200 of the payments due? A. Yes, sir. And I called him up and I said I make it up the next time. There was never any kind of fight over one or two hundred dollars, sir.

Q. When did you make that \$100 deficiency up? A. Could be the next month or maybe the next month.

52 Q. Do you have a receipt for the paying of it? A. Most I paid by checks.

Q. In addition to the regular payments? A. Yes. When I was short, I made \$300 the check.

Q. Did you make a full payment of \$200 in February of 1959?

A. I think I make all payments. I don't think I owe Mr. Gideon any money, sir.

* * * * *

Q. In September of 1959 did you pay the taxes for the sum of \$258.06?

* * * *

THE WITNESS: No, sir.

* * * *

MR. MILLER: If they want credit for the full \$200 if Your Honor please, they certainly can't expect us to pay taxes.

* * * *

53 BY MR. MILLER:

Q. And in November of 1959 public liability for \$41.55?

* * * *

54 Q. You didn't pay it? A. No, sir.

Q. And in September of 1960, personal property taxes for \$10?

A. Well, I believe so. I mean, \$10 is so small I don't think I would forget \$10.

Q. And also the liability insurance in September of 1960 for \$32.34?

A. I have never paid liability insurance because Mr. Gideon told me he pays it.

* * * *

55 ROLAND TAYLOR JACKEL

called as a witness by counsel for the plaintiff, being first duly sworn,
was examined and testified as follows:

56 DIRECT EXAMINATION

BY MR. QUIMBY:

Q. State your full name, please, sir? A. Roland Taylor Jackel.

Q. Where do you live? A. 1732 Irving Street, Northwest, Washington, D. C.

Q. What is your occupation? A. I am employed by the Federal Government as a chemist.

Q. Mr. Jackel, do you know the plaintiff in this case, Mrs. Hilsamer?

A. Yes, I do.

Q. How long have you known her? A. Since 1955, approximately.

Q. And how did you become acquainted with her? A. She was a governess in my home. I became a widower in 1954, and early in 1955

I employed Mrs. Hilsamer to be my governess. I have a son who at that time was about 9 years old. Hence, I needed a governess and I employed Mrs. Hilsamer as a governess as of that time.

Q. Now, did you know Mr. Gideon, the defendant in this case?

A. Yes, I did.

57 Q. When did you first meet him? A. Approximately January of 1955.

Q. And will you tell His Honor the circumstances under which you met him? A. I met Mr. Gideon in connection with the property which Mr. Gideon owned at 1462 Irving Street, which Mrs. Hilsamer was considering renting from him at that time. And I looked at the property, met Mrs. Hilsamer, went with Mrs. Hilsamer, and talked with Mr. Gideon about the various aspects of the deal, and so forth.

Q. During your conversation with Mr. Gideon, did you ever have occasion to discuss premises known as 30 6th Street, Southeast, Washington, D. C.? A. Yes, I did.

Q. Will you tell His Honor about that? A. In connection with discussing the Harvard Street house I asked Mr. Gideon if the deal would be the same as the deal on 30 6th Street, Southeast. The deal on 30 6th Street, Southeast being premised on half the rent being deducted from option-purchase price and then at some later time the property to be conveyed to Mrs. Hilsamer.

THE COURT: And did you say that to him just as you have said it to me, "all being premised", et cetera?

58 THE WITNESS: Essentially, yes. I do not perhaps use identical words but I made it quite clear and I asked him if the deal would be the same as the deal on 6th Street.

THE COURT: That is one thing.

But did you say it was premised?

THE WITNESS: Oh, no, I used the language I said, "will all of the rent be deducted from the purchase price"?

We are talking now about Harvard Street.

He said yes.

THE COURT: He said all the rent would be deducted?

THE WITNESS: Would be deducted, yes.

* * * * *

59 THE COURT: Well, now, you can't state what you assumed. We have to have your recollection. Not what you assumed.

People can't be bound by your assumptions.

Now what was said by him and by you?

THE WITNESS: Mr. Gideon said yes.

THE COURT: What did he say yes to?

THE WITNESS: He said yes that all of the rent would be deducted from the purchase price, the same as the deal that had been made on 6th Street that was covered by a lease.

* * * * *

60

CROSS EXAMINATION

BY MR. MILLER:

Q. Mr. Jackel, on the day that you saw Plaintiff's Exhibit No. 1, which is the contract that Mr. Quimby just showed you, you looked it over, did you not? A. Yes, I did.

Q. And you had a discussion with Mrs. Hilsamer about it? A. Yes, I did.

Q. And you recommended that it would be all right for her to sign it? A. Yes. She asked me my advice on it. I looked it over and I said in view of the very attractive option situation in it, I recommend you sign it.

61 Q. Then you knew then when you were speaking to Mr. Gideon in Harvard Street, that this required Mrs. Hilsamer to put a 10,000 and \$20,000 public liability insurance on it. You knew that, didn't you?

* * * * *

Q. About the 6th Street property? A. You are speaking about that now?

Q. Yes.

* * * * *

62 Q. My question is that when you did discuss with him and whatever you did discuss, you knew because of your previous perusal of that contract, that Mrs. Hilsamer was required to carry public liability insurance?

A. This did not occur to me at the time of the discussion. I did not know.

Q. Did it occur to you or did you remember at the time when you had this conversation at Harvard Street, that Mrs. Hilsamer was to make repairs, all repairs to the property? A. Yes. In fact, I believe she did.

Q. You knew that? A. Well, I knew that it was a part of the agreement with Mr. Gideon.

Q. And did you also, Mr. Jackel, when you had the conversation on Harvard Street, know or remember that if no default is made in the monthly payments that she would be entitled to exercise an option to purchase the property — A. With respect to 6th Street, yes.

Q. Yes, at 23,750.

Now you also knew that the last sentence in the contract says "interest to be charged at the rate of six per cent on the unpaid balance". You remember that too don't you? A. Yes.

63 Q. Then when you asked him, when he offered the Harvard Street, this would be on the same term as the 6th Street, was it necessary then to emphasize or repeat what the terms were of the 6th Street if he knew them and you knew them? A. Well, when one negotiates to make a lease for something I think all things that seem to be pertinent at the time have to be discussed.

Q. Then you did discuss not only the same terms but you discussed what the terms were? A. We discussed, as I said, the deduction of the entire rent from the option price, with respect to Harvard Street as compared to 6th Street, yes.

Q. And when he said the entire payments would be deductible, did you remind him or did you have any discussion that interest would be deducted first? A. The understanding on 6th Street was that this interest would apply to a remaining balance on the property if Mr. Gideon elected to be the grantor of the first trust on it.

Q. You weren't present at that time and had no conversation, so where do you gather that from this contract? A. I gather it from reading what it says on there.

64 Q. But you only get that idea or understanding just merely because you read it on this prior contract of the 6th Street property? A. Yes, that is the way I read it.

Q. But you did not have any conversation with Mr. Gideon relative to 6th Street at the time this was presented, did you?

* * * * *

A. No, I did not have a conversation with Mr. Gideon until a number of months later, approximately January of 1959.

* * * * *

69 LOUISE HILSAMER

resumed the witness stand, having been previously duly sworn, and was examined and testified as follows:

DIRECT EXAMINATION (Recalled)

BY MR. QUIMBY:

Q. Miss Hilsamer, before the luncheon recess, you recall you testified about having some checks?

* * * * *

A. Yes. I am sorry but I couldn't find them.

* * * * *

70- THE COURT: They are necessary, I would think.

80 MR. QUIMBY: I would think so, too, Your Honor. I was certain from what she said that she could go home and find them.

THE COURT: I do not understand her coming down to court for the trial of this case and not having the evidence with her.

* * * * *

81

Washington, D. C.
March 9, 1964.

* * * * *

84

LOUISE HILSAMER

REDIRECT EXAMINATION (Continued)

BY MR. QUIMBY:

Q. I hand you 9A. That is made out for \$125. A. Yes, sir.

85

Q. Now, is there any notation on there or do you have any way of
identify — A. \$25 for license.

* * * * *

MR. QUIMBY: This is dated November 20, 1958.

* * * * *

Q. [By Mr. Quimby] Now I hand you Plaintiff's Exhibit 9-B, being
a check dated September the 14th, 1959, and ask you if you will examine

86

that and tell us whether there is any indication on that check with
reference to the license fee for doing business in the rooming house?

A. Yes. It is for '59. \$25. For the license fee.

* * * * *

THE COURT: That is license fee for what year?

MR. QUIMBY: 1959. September 1959.

* * * * *

THE COURT: He did not claim she did not pay license fees for
'59. He admitted that on his books. The only year he claims she didn't
pay license fees was for 1960.

Am I right about that, Mr. Miller?

MR. MILLER: Yes, 60 and 61, Your Honor.

THE COURT: I thought it was 1960.

And 1961 also?

MR. MILLER: Yes, sir.

* * * * *

87

BY MR. QUIMBY:

Q. I now hand you plaintiff's exhibit 9-D and ask you to look at
that, being a check dated October 4, 1960, made payable to Mr. Gideon,

in the sum of \$225.00; can you tell us what that is? A. \$200 was the rent and \$25 was license fee.

MR. QUIMBY: Would you mark this, please, for identification?

DEPUTY CLERK: Plaintiff's No. 10 is marked for identification.

(Plaintiff exhibit 10 marked for identification.)

THE COURT: The difficulty is, if she charges that to license fee, she is in arrears in her rent.

In December of 1958 she only paid \$150 rent according to the ledger.

88 The only way that could be made up is by using these items.

* * * * *

89 THE COURT: The difficulty with that is this: That that makes the rent.

* * * * *

THE COURT: * * * This makes the rent paid up but when you start using those funds to pay license fees, then the rent is in arrears.

* * * * *

95 CROSS EXAMINATION

BY MR. MILLER:

Q. Mrs. Hilsamer, with respect to the various payments that were made that were due each month, you never made them on time, did you?

96 A. No. * * *

* * * * *

99 Q. You did not pay any of the public liability insurance premiums?

A. This was between Mr. Gideon and me. He told me I don't - because I don't want to keep the whole thing in my name.

THE COURT: And he did not want you to reimburse him for that money?

THE WITNESS: Not yet. Maybe later. But he never said it at the time, sir.

THE COURT: Didn't he expect you to pay him?

THE WITNESS: Maybe later. Maybe when -

THE COURT: What did he say to you?

THE WITNESS: He said he don't want to make it in my name, also he don't want the license in my name. He want to keep it this way. Then I was very stupid. Now, I am a little bit more smarter. I wouldn't get hooked the second time. That is for sure.

* * * * *

DEFENDANT'S EXHIBIT 1

PAYMENT RECORD BOOK

Mrs. Louise Hilsamer
30 - 6th St., S.E.

In account with George Gideon

Mrs. Louise Hilsamer, 1732 Irving St., N.W.
Rent of 30 - 6th St., S.E., Washington, 3, D. C.
Starting Sept. 1, 1958 \$200/per month

<u>Date Paid</u>	<u>Amount Paid</u>	<u>Due</u>	
Sept. 7 - 58	\$200.00	Water	11.20
Oct. 7 - 58	200.00	Taxes	186.63
Nov. 12 - 58	100.00	Fire	
		Insurance	95.00
Nov. 20 - 58	100.00	Lib. Ins.	41.58
Dec. 19 - 58	110.00		
Dec. 27 - 58	40.00		
Jan. 15 - 59	100.00		
Jan. 20 - 59	100.00		
Feb. 4 - 59	100.00		
Feb. 12 - 59	100.00		
March 9 - 59	200.00		
April 5 - 59	200.00		
May 6 - 59	200.00		
June 3 - 59	215.00		
July 7 - 59	200.00		
Aug. 8 - 59	210.00		

<u>Date Paid</u>	<u>Amount Paid</u>	<u>Amount Due</u>
Sept. 3 - 59	\$100.00	Taxes \$258.06
Sept. 15 - 59	100.00	Personal Property \$10.00
Oct. 6 - 59	200.00	Lib. Ins. \$41.58
Nov. 5 - 59	150.00	
Nov. 13 - 59	50.00	
Dec. 3 - 59	100.00	
Dec. 8 - 59	100.00	
Jan. 11 - 60	200.00	
Feb. 6 - 60	200.00	
March 6 - 60	200.00	
April 4 - 60	100.00	
April 6 - 60	100.00	
May 4 - 60	200.00	
June 6 - 60	200.00	
July 8 - 60	130.00	
July 12 - 60	70.00	
Aug. 5 - 60	100.00	
Aug. 9 - 60	100.00	Personal Property \$10.00
Sept. 1 - 60	200.00	Taxes \$258.06
Oct. 7 - 60	225.00	Lib. Ins. \$32.34
Nov. 4 - 60	200.00	License \$25.00
Dec. 9 - 60	200.00	
Jan. 10 - 61	200.00	
Feb. 9 - 61	200.00	
March 7 - 61	100.00	
March 13 - 61	100.00	
April 6 - 61	100.00	
April 11 - 61	100.00	
May 4 - 61	100.00	
May 10 - 61	50.00	
May 16 - 61	50.00	

<u>Date Paid</u>	<u>Amount Paid</u>	<u>Amount Due</u>
June 8 - 61	\$100.00	
June 12 - 61	100.00	
July 11 - 61	100.00	
July 15 - 61	100.00	License \$25.00
Aug. 9 - 61	100.00	Lib. Ins. 32.34
Aug. 16 - 61	100.00	Taxes 280.50
Sept. 8 - 61	100.00	Personal Property \$10.00
Sept. 15 - 61	100.00	
Oct. 3 - 61	200.00	

PLAINTIFF'S EXHIBIT 1

THIS AGREEMENT

Made this 1st day of September, 1958, between George D. Gideon of the first part, and Louise Hilsamer of the second part, all of the District of Columbia, whereby the party of the first part has let, and does hereby let to the said party of the second part, the premises known as No. 30 - 6th Street, S.E., Washington, D. C. in said District (the same being a house), by the month commencing on the 1st day of September, A.D. 1958, at and for the monthly rent of Two hundred (\$200.00) .00 Dollars, payable in advance, at the home of George D. Gideon that is to say, on the 1st. day of each month as rent in advance for the ensuing month.

And the said party of the second part has agreed to take, and does hereby take and hold the said premises as tenant by the month, at the said rent, payable as aforesaid; that she will pay the water rent, gas and electric bills as they become due, and that she will not sublet or assign the said premises, or any part thereof, or carry on any business therein except that of a Licensed Rooming House without the written consent of the said lessor, or use the same for any disorderly or unlawful purpose.

PROVIDED, That if the said lessee shall fail to pay the said rent

in advance as aforesaid, although there should have been no legal or formal demand for the same, or shall neglect to pay the water rent, gas or electric bills at the time and on the day when the same shall fall due and be payable, as hereinbefore mentioned, or shall sublet or assign the said premises, or any part thereof, or carry on any business therein except that of rooming house aforesaid, without the written consent as aforesaid, or shall use the same for any disorderly or unlawful purpose, or break either of the aforesaid covenants, then, and in either of said events, this Agreement, and all things herein contained, shall cease and determine, and shall operate as a Notice to Quit, the thirty days' notice to quit being hereby expressly waived. And the said lessor, heirs and assigns, shall and may proceed to recover possession of said premises under the provisions of the Code of Law for the District of Columbia, to regulate proceedings in cases between landlords and tenants, but if no default occurs on the part of said lessee, then ____ shall be entitled to not less than _____ days' notice to vacate the house and premises, which notice shall be given in writing, at least ____ days before said tenancy is intended to be terminated, and the owner or agent shall be entitled to the same notice from the lessee, should ____ desire to vacate the aforesaid house and premises.

AND IT IS FURTHER PROVIDED, That if, under the provisions of this Agreement, default be made and a compromise or settlement shall be made thereupon, it shall not constitute a waiver of any covenant herein contained. And the said lessee hereby agree to deliver the house in the same order in which it was received, usual wear and tear, fire and storm excepted; and it is further agreed that no waiver of one breach of any contract herein contained shall be construed to waive or in any manner affect the covenants of this agreement.

IT IS FURTHER AGREED, That rent shall cease if the said premises be destroyed by fire or any unavoidable casualty, so as to make them uninhabitable.

The lessee covenants and agrees to procure an owners, Landlord and tenant liability policy to protect her self and the lessor with limits of

(\$10,000.00 and \$20,000.00) and to provide the lessor with a certificate of said Policy. The lessee covenants and agrees that she will at her own expense comply with all rules, regulations, motions and statutes both of common law and such as may be issued by the United States Government, District of Columbia, or any of the officers, agents, Boards, or commissions thereof and the lessor shall not be required to do any act, or incur any expenses occasioned by compliance with such orders, rules, or regulations in order that the tenant may conduct the business of a licensed tenement or rooming house. Tenant is to make and pay for all repairs. If no default is made in the monthly payment, Lessee has the option to purchase the said property on rental basis, for the price of \$23,750.00 Interest to be charged at the rate of 6% per year on the unpaid balance.

IN TESTIMONY WHEREOF, We have hereunto set our hands the day and year first hereinbefore written.

Witness:

_____/s/ George D. Gideon
 _____/s/ Louise Hilsamer

PLAINTIFF'S EXHIBIT 2

1732 Irving St. N.W.
 Washington 10, D. C.

February 8, 1961

Mr. George Gideon
 1817 - 41st Place, S.E.
 Washington 20, D. C.

Dear Mr. Gideon:

I enclose herewith a check for \$200.00 which is my rental payment for 30 - 6th S.E., Washington D. C. for February 1961. I have now paid a total of \$6,000.00 under our rental-option to buy agreement, and I wish to buy and take title to the property as provided in the lease. According to my figures, the remaining balance to be paid monthly is \$17,500.00 to be increased by the taxes and license fees you have paid during my

period of tenancy. I would appreciate it therefore if you would make arrangements with any District of Columbia title company to settle this transaction.

Very truly yours,

Louise B. Hilsamer

Encl.

PLAINTIFF'S EXHIBIT 3

[SALES CONTRACT]

October 4, 1961

RECEIVED FROM Louise Hilsamer a deposit of Two Thousand Dollars (\$2,000.00) to be applied as part payment of the purchase of Lot 832 in Square 869, with improvements thereon known as No. 30 Sixth Street, Southeast in the District of Columbia, upon the following terms of sale:

Total price of property Twenty-three thousand, Seven Hundred, Fifty and -----no/100 Dollars (\$23,750.00).

The purchaser agrees to pay Two Thousand Dollars (\$2,000.00) cash at the date of conveyance, of which sum this deposit shall be a part.

The purchaser is to place a first deed of trust secured on the premises of the maximum amount obtainable from Perpetual Building Ass'n or similar lending agency. ~~Purchaser to receive credit for sums heretofore paid under written agreement between parties, dated September 1, 1958, at the rate of Two Hundred Dollars (\$200.00) per month to October 1, 1961, or Seven Thousand, Four Hundred Dollars (\$7,400.00).~~

The balance of deferred purchase money is to be secured by a second deed of trust on said property, to be paid in monthly installments of Ten Dollars (\$10.00) per thousand or more, including interest at the rate of six per cent per annum, each installment when so paid to be applied, first, to the payment of interest on the amount of principal remaining unpaid and the balance thereof credited to principal.

Trustees in all deeds of trust are to be named by the parties secured thereby.

The property is sold free of encumbrances except as aforesaid; title is to be good of record and in fact, subject, however, to covenants, conditions, and restrictions of record, if any; otherwise said deposit is to be returned and sale declared off at the option of the purchaser, unless the defects are of such character that they may readily be remedied by legal action, but the seller and agent are hereby expressly released from all liability for damages by reason of any defect in the title. In case legal steps are necessary to perfect the title, such action must be taken by the seller promptly at his own expense, whereupon the time herein specified for full settlement by the purchaser will thereby be extended for the period necessary for such prompt action.

Rents, taxes, water rent, insurance and interest on existing encumbrances, if any, and operating charges are to be adjusted to the date of the transfer. Taxes, general and special, are to be adjusted according to the certificate of taxes issued by the Collector of Taxes of the District of Columbia, except that assessments for improvements completed prior to the date hereof, whether assessment therefor has been levied or not, shall be paid by the seller or allowance made therefor at the time of transfer.

Examination of title, tax certificate, conveyancing, notary fees and all recording charges, including those for purchase money trust if any, are to be at the cost of the purchaser; provided, however, that if upon examination the title should be found defective the seller hereby agrees to pay the cost of examination of the title and also to pay to the agent herein a commission hereinafter provided for just as though the sale had actually been consummated and all the terms of this contract complied with.

Within sixty (60) days from the date of acceptance hereof by the owner, or as soon thereafter as a report on the title can be secured if promptly ordered, the seller and purchaser are required and agree to

make full settlement in accordance with the terms hereof. If the purchaser shall fail so to do, the deposit herein provided for may be forfeited at the option of the seller, in which event the purchaser shall be relieved from further liability hereunder, or without forfeiting the said deposit the seller may avail himself of any legal or equitable rights which he may have under this contract. In the event of the forfeiture of the deposit, the seller shall allow the agent one-half thereof as a compensation for his services to him.

Settlement is to be made at the office of Charles H. Quimby, Attorney or at the Title Company searching the title, and deposit with the Title Company or with Charles H. Quimby, Atty. of the purchase money, the deed of conveyance for execution and such other papers as are required of either party by the terms of the contract shall be considered good and sufficient tender of performance of the terms hereof.

Seller agrees to execute the usual special warranty deed. Property is sold subject to an existing tenancy as follows: tenant occupancy as of date of settlement.

Seller agrees to give possession at time of settlement, and in the event he shall fail so to do he shall become and be thereafter a tenant by sufferance of the purchaser and hereby waives all notice to quit, as provided by the laws of the District of Columbia. (Strike one of the two foregoing sentences.)

The risk of loss or damage to said property by fire or other casualty until the deed of conveyance is recorded is assumed by the seller.

All notices of violations of Municipal orders or requirements noted or issued by any department of the District of Columbia, or prosecutions in any of the courts of the District of Columbia on account thereof against or affecting the property at the date of the settlement of this contract shall be complied with by the seller and the property conveyed free thereof. This provision shall survive the delivery of the deed hereunder.

The seller agrees to pay to None
(Name of Broker)

his agent, a commission amounting to \$ none , and the Title Company, or the Real Estate Office, through which settlement is made is hereby authorized and directed to make deduction of the aforesaid commission from the proceeds of the sale and to make payment thereof to the said agent. Entire deposit is to be held by Charles H. Quimby, Attorney until settlement hereunder is made.

The principals to this contract mutually agree that it shall be binding upon their respective heirs, executors, administrators or assigns.

This contract, made in triplicate, when ratified by the seller contains the final and entire agreement between the parties hereto and they shall not be bound by any terms, conditions, statements or representations, oral or written, not herein contained.

Agent.

We, the undersigned, hereby ratify, accept and agree to the above memorandum of sale and acknowledge it to be our contract.

Property is to be conveyed in the name of Louise Hilsamer.

/s/ Louise Hilsamer
Purchaser

19

Seller.

19

Wife of Seller.

PLAINTIFF'S EXHIBIT 4

October 7, 1961

Mr. George Gideon,
1817 - 41st Place, S. E.,
Washington 20, D. C.

Dear Mr. Gideon:

Enclosed herewith is an original and one copy of the sales contract prepared for the sale of premises 30 Sixth Street, S.E., Washington, D.C., from you to Louise Hilsamer, all in accordance with your agreement heretofore entered into with her.

Kindly execute the original and return it to this office. The copy is for your files.

For your information, application has been made to the Perpetual Building Association for a maximum loan on this property.

I will advise you when final arrangements for settlement have been made.

Very truly yours,

Charles H. Quimby

encls.
m

PLAINTIFF'S EXHIBIT 5

Washington D. C.
Sept. 12-61

Mrs. Hilsamer

I talked to a man from one of the large insurance companies about getting loans on some of my houses so I could sell them, and he said if I had someone in some of my houses that it might be arranged so that all they would need would be to have enough money to pay the settlement cost. If you would like to talk to me about it, let me know when I can see you.

/s/ Mr. Gideon

PLAINTIFF'S EXHIBIT 6

CHARLES H. QUIMBY
Attorney at Law
650 Warner Building
Washington 4, D. C.

September 25, 1961

Mr. George Gideon,
1817 - 41st Place, S. E.,
Washington 20, D. C.

Dear Mr. Gideon:

Mrs. Louise B. Hilsamer has consulted me with reference to a contract signed between the two of you, under date of September 1, 1958, regarding premises 30 - 6th Street, S. E., Washington, D. C.

Mrs. Hilsamer has stated that she has heretofore advised you she wishes to take under the option granted in the agreement concerning the purchase of the property.

She has handed me your letter of September 12, 1961, and requested that I handle the transaction with you for her.

Kindly get in touch with me upon receipt of this letter.

Very truly yours,

/s/ Charles H. Quimby

Charles H. Quimby

PLAINTIFF'S EXHIBIT 7
(Reverse side of
Plaintiff's Exhibit 6)

Washington, D. C.
Sept. 21, 1961

Charles H. Quimby

Dear Sir:

All that is needed to get the deed to the property at, 30, Sixth St., S. E.

Is to go to one of the loan companies, and get a first trust, on the property, and I will carry a second trust on the property.

As soon as you can get a commitment for a first trust, let me know
Then have the Tittle Co. make settlement.
I can only be reached on Saturdays.

Yours Truly
George Gideon

PLAINTIFF'S EXHIBIT 8

Application No. 178962

Date 10/19/61

PERPETUAL BUILDING ASSOCIATION
Eleventh and E Streets, N.W.
Washington 4, D. C.

Our Executive Committee has authorized a loan of \$14,000.00 on premises 30 - 6th Street, S. E. subject to sale @ \$23,750.00 with \$9,400.00 minimum cash. Subject to painting all exterior wood and metal work and furnishing a satisfactory Release of Liens. Loan fee to be 1%, plus appraisal and inspection fee.
payable \$100.31 plus one twelfth yearly taxes monthly, interest at 6% per annum. (Adjustment of expired portion of yearly taxes must be made with title company at time of settlement.)

Acceptance of this loan must be made within thirty days at which time \$16.00 as part payment of Title expenses will be required.

Bring this notice with you.

Very truly yours,

PERPETUAL BUILDING ASSOCIATION

W. S. Martindill

Vice President and Secretary.

TO

Charles H. Quimby
650 Warner Building
Washington 4, D. C.

MENT
SENT
10M 8-18-60
OCT 19 1961

PERPETUAL BUILDING ASSOCIATION 178962
Eleventh and E Streets N. W.

APPLICATION FOR LOAN - RESIDENTIAL PROPERTY

Name of Applicant Louise Hilsamer
Mailing Address c/o Charles H. Quimby, 650 Warner Bldg., Washington 4, DC Phone RE. 7-4072
Amount of loan desired \$ MAX Term Years Purchase Price \$ 23,750.00
Year Purchased 1961 Cash Payment \$ 9,400.00

ADDRESS OF PROPERTY 30 Sixth Street, Southeast, Washington, D. C.

Lot 832 Block 869 Square
Subdivision County State
Occupied by: Owner () Tenant (x) Vacant () Monthly Rental \$ 400.00

PRESENT ENCUMBRANCES First Trust \$ Held By
Second Trust \$ Held By 1125 on each block

IMPROVEMENTS 11 Rooms, 4 Lavatories, 4 Baths, Enclosed Porches
3 Stories, (x) Basement, () Attic: Finished, Unfinished, () Recreation
Room, (x) Utility Room, () Maid's Room

TYPE () Row, (x) Semi-detached, () Detached

CONSTRUCTION (x) Brick, () Brick Veneer, () Stone, () Cinder Block, () Frame,
() Composition Siding, () Asbestos Shingles
Stucco over: () Brick, () Frame, () Cinder Block, () Tile, () Lath.

ROOF () Tin, () Slag, () Tile, () Asbestos, (x) Composition, () Slate, () Asphalt.

HEAT Fuel: Coal , Gas , Oil x (x) Hot-water, () Radiant, () Baseboard, () Steam,
() Vapor Heat, () Hot-air, () Forced Warm Air, () Summer Air Conditioning.

GARAGE Number of cars: () Built-in, () Brick, () Frame, () Metal, () Carport

MISCELLANEOUS (2) Electric Refrigerator, (Gas 2, Electric) Range, () Disposal, () Dishwasher,
() Storm Windows, (x) Screens, (x) Weatherstrip, () Insulation.

SIZE OF LOT 24 Ft. wide by 40 Ft. deep containing 960 square feet with
Ft. Side Alley Ft. Rear Alley, () Paved, () Unimproved.

The representations made herein are true and the application may be revoked or rejected by the Association at any time if the actual facts are found to differ materially from those stated.

Louise Hilsamer
(Signature of Applicant or Agent)

Date October 7, 1961 (Address of Applicant or Agent)

APPRAISERS' ESTIMATED VALUE OF LAND AND IMPROVEMENTS

Value of Land \$ 1,500.00
Value of Improvements \$ 18,500.00
Total Estimated Value \$ 20,000.00
Date inspected October 18, 1961

Appraisers

Loan Approved: \$ 14,000.00 @ 6 % payable \$ per \$1000 or
in 20 years plus taxes. 17 loan fee. Subject to sale at \$23,750.00 also to
painting all exterior wood & metal work and release of
liens. Min. cash \$9,400.00

OCT 19 1961

10/19/61
Date

Executive Committee

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from the original bound volume

Wednesday
Address 30 SIXTH ST.
go to side entrance S.E.

Ground \$ 1500

Improvements \$ 8500

10/18/61 \$ 20,000

Inside \$ MAX.

Loan Desired \$ MAX.

Term Years

Appraisers' recommendation as to

Amount \$ 14,000

Term 20 Years

Interest Rate 6 %

1% Loan fee

Subject to sale

at \$23,750 - then

cash \$9,400 - also

to painting all exterior

wood & metal

work & Rel of L. & S.

Kindly permit the bearers, who are Representatives of the Perpetual Building Association, to inspect the premises named herein.

PERPETUAL BUILDING ASSOCIATION

Date, 19

Your offer of a loan of \$

@ %, Payable \$ Monthly

Plus 1/12 Yearly Taxes

on the within described property is accepted and you are authorized to order the necessary papers prepared at my expense. The cost of appraisal, examination of title, preparation of papers, notarial fees, recording, fire and extended coverage insurance, etc., is hereby guaranteed by the applicant.

APPLICANT'S CREDIT STATEMENT

Name Louise Hilsamer

Residence 1732 Irving Street, N. W.

Married? Single? X

Occupation? Manager

Business Address National Air Port
Gift Shop

Business Phone RE. 7-1948 X20

Number of years in present employment?

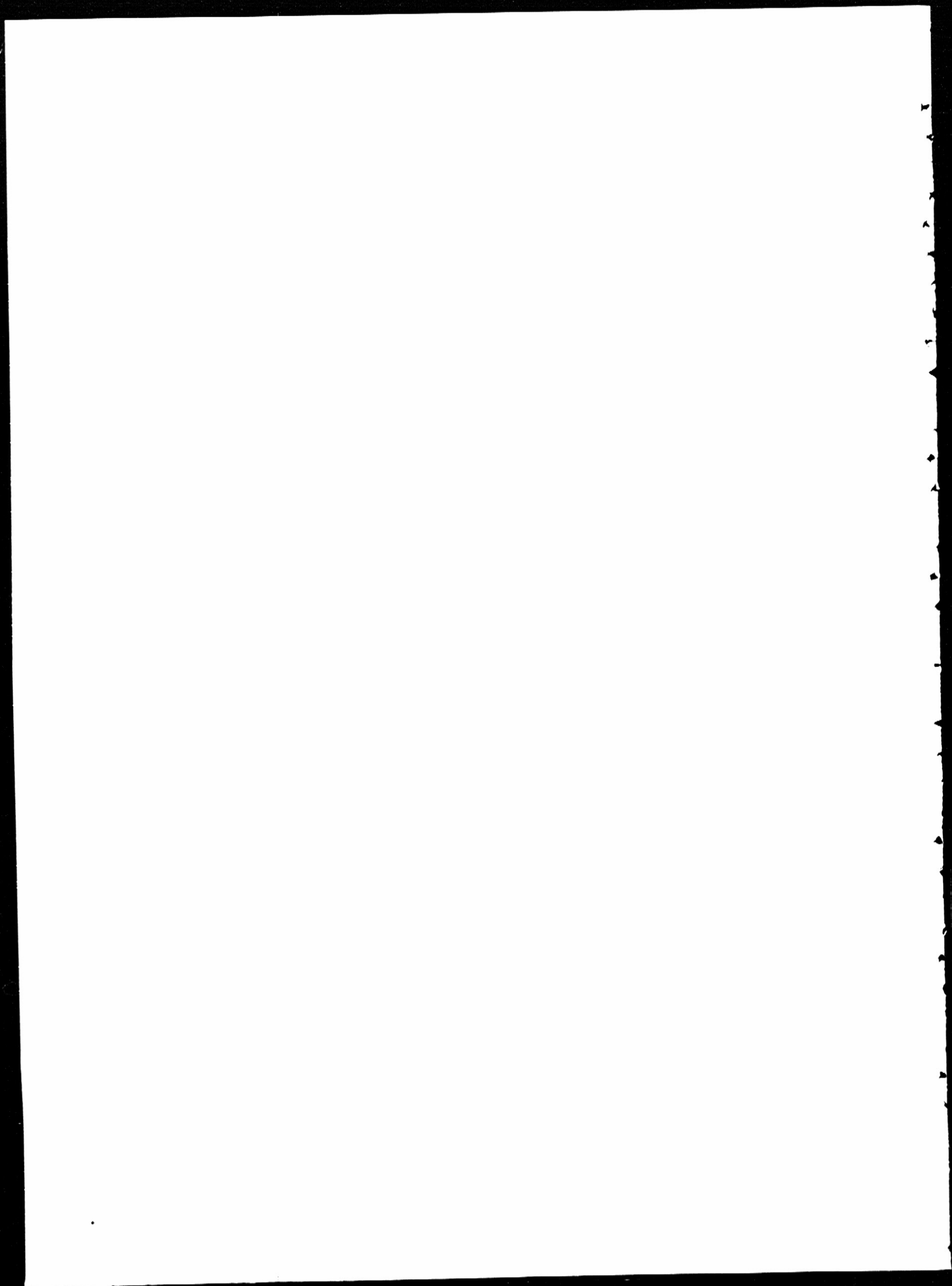
Salary & gross rents
Total Annual Income \$ 9,000.00

Remarks

Do you have savings with
Perpetual? No
Do you have a loan with
Perpetual now? No

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from the original bound volume



CHARLES H. QUIMBY
Attorney at Law
650 Warner Building
Washington 4, D. C.

October 7, 1961

Perpetual Building Association,
Eleventh and "E" Streets, N. W.,
Washington, D. C.

Gentlemen:

There is enclosed herewith application to your company for a maximum loan on premises 30 Sixth Street, S. E., Washington, D. C., by Mrs. Louise Hilsamer.

Kindly direct future correspondence in connection with this matter to me.

Very truly yours,
/s/ Charles H. Quimby
Charles H. Quimby

encl.
m

PLAINTIFF'S EXHIBIT 9

Washington, D. C.

Feb. 10, 1961

Mrs. Louise Hilsamer
1732 Irving St., N. W.
Washington 10, D. C.

Dear Mrs. Hilsamer:

You do not understand the rental agreement, that you have on 30 Sixth Street, S. E..

It says you are to pay a monthly rental of \$200.00 per month, and that you have the option to buy the property, on a rental basis if no default is made in the monthly payments, and that Taxes, License, Insurance, and Intrest of 6% is to be charged against the unpaid balance.

The purchase price was to be ~~\$23,000.00~~ -- \$23,750.00
 the new balance after the monthly just recieved is \$21,983.02
 Now there is the cost of makeing settelement at the TitleCompany
 which you will have to pay, also some agreement must be made as to
 how you are going to pay the balance due.
 Also you are the one that has to make arrangement with the Title
 Company
 I will be glad to have you get Title to the property when ever you are
 able to take care of it.

Yours Truly

George Gideon

Advertisement - THE SUNDAY STAR,
 Sunday, August 21, 1958

ROOMING HOUSE OWNER has several
 good properties. He will sell business
 and property like rent. 3433 Oakwood
 Ter. n.w. or DE 2-1898.

[Filed March 25, 1964]

LOUISE HILSAMER,

Plaintiff

v.

DANIEL W. GIDEON, ADMINISTRATOR
 ESTATE OF GEORGE D. GIDEON,

Defendant

Civil Action No. 3737-61

FINDINGS OF FACT, CONCLUSIONS OF LAW AND
 JUDGMENT

This cause coming on to be heard by the Court, and from the evi-
 dence adduced, the exhibits introduced in evidence and argument of
 counsel for the respective parties, the Court this 23d day of March 1964,
 makes the following

FINDINGS OF FACT

1. The defendant's deceased, George D. Gideon owned premises 30-6th Street, S. E., located in the District of Columbia being known for assessment and taxation purposes as Lot numbered eight hundred thirty-two (832) in Square numbered eight hundred sixty-nine (869).

2. On September 1st, 1958 he and the plaintiff entered into a written agreement by which said premises were rented to the plaintiff as tenant by the month at a rent of \$200.00 per month payable on the first day of each month in advance commencing September 1st, 1958, and in said agreement the plaintiff agreed, in addition to the payment of said rent, to pay water rent, gas and electric bills as they became due. The plaintiff also agreed to procure a public liability insurance policy in limits of \$10,000.00 and \$20,000.00 to protect her self and the said George D. Gideon, and provide him with a certificate of said policy. The plaintiff agreed also to pay for all repairs to said property. The agreement also provided that if there was no default in the payments required to be made by the plaintiff she had a right or option to purchase said property on a rental basis for the sum of \$23,750.00 with interest on the unpaid balance.

3. Plaintiff, according to the ledger of the defendant paid rent to and including October 1961, and although not paid on the day the same was due, these payments were acquiesced to by Mr. Gideon as a deviation. Plaintiff did not pay the liability insurance premiums for 1958, 1959, 1960 and 1961, nor did she pay the taxes and fire insurance for 1958, nor the taxes for 1959, 1960 and 1961. But she was under no contractual obligation to do so.

4. Plaintiff did not pay the personal property taxes for 1959, 1960 and 1961. She did not pay the license fee for 1961.

5. Plaintiff admits she did not pay the liability insurance, but claims Mr. Gideon agreed to pay them for her without reimbursement at the time, but probably to be made at sometime later. The Court cannot give credit to this in view of the fact that the defendant in his

ledger, which has not been impeached, and the entries of which were made before this controversy, charged her with the liability policy premiums.

6. The Court further finds plaintiff did not pay water rent for 1958, and there is some dispute as to whether that was payable before she moved into the property.

7. The Court finds the plaintiff was in default of her agreement in the respects above mentioned.

8. Plaintiff did pay for costs of repairs of not a substantial nature as she was required to do by the contract.

9. Plaintiff now seeks to purchase the property under the option on a rental basis for \$23,750.00, and her claim is that the contract means that she could pay \$200.00 a month as rent and receive credit for such payment against the total price without interest on the unpaid balance until she exercised her option.

10. The Court finds the contract to be ambiguous, especially when read in the light of the advertisement, and it is difficult for the Court to accept the contention that the owner intended to sell the property on what would amount to an installment basis unless the rent was large enough to include interest on the running balance plus insurance and taxes, and there is no evidence supporting such claim that the rent was large enough to include these items.

11. Assuming this was the intention of the parties, tender was likewise insufficient in that no cash was tendered, but instead, a sales contract and a commitment from Perpetual Building Association was tendered.

12. Assuming there was a sufficient tender to take place of a full cash tender, or its equivalent, it appears that the sales contract tendered was on the following terms:

Total price of property	\$23,750.00 of which
\$2,000.00 would be paid at date of conveyance; that the purchaser	
would place a first deed of trust secured on the premises on the maxi-	
mum amount obtainable from Perpetual Building Association and pay	

the deferred purchase money by a second trust to be paid in monthly installments of \$10.00 per thousand. The commitment from the building and loan association was for \$14,000.00 with \$9,400.00 minimum cash. Therefore, the commitment does not satisfy the requirements of the sales contract, and there is no evidence that the defendant or anyone else was willing to lend money on a second trust for the difference, on the specific terms set forth in the proposed contract.

Accordingly, the Court makes the following

CONCLUSIONS OF LAW

1. The contract sued on is so ambiguous and uncertain as not to be susceptible of specific performance.
2. Even if there is no ambiguity by evidence outside of the record which has not been established, the tender on the basis made is inadequate.
3. That the plaintiff is in default of her commitments under the contract which would deprive her of her standing to seek the aid of a Court of Equity.
4. That the complaint be dismissed.

JUDGMENT

Upon consideration of the evidence adduced in open court, the exhibits and argument of counsel thereon, and pursuant to oral opinion of the Court made a part hereof thereupon, it is this 23rd day of March 1964, by the Court:

ORDERED, ADJUDGED and DECREED, That the plaintiff's complaint be, and the same is hereby dismissed.

By the Court.

/s/ David A. Pine
Judge

[Certificate of Service]

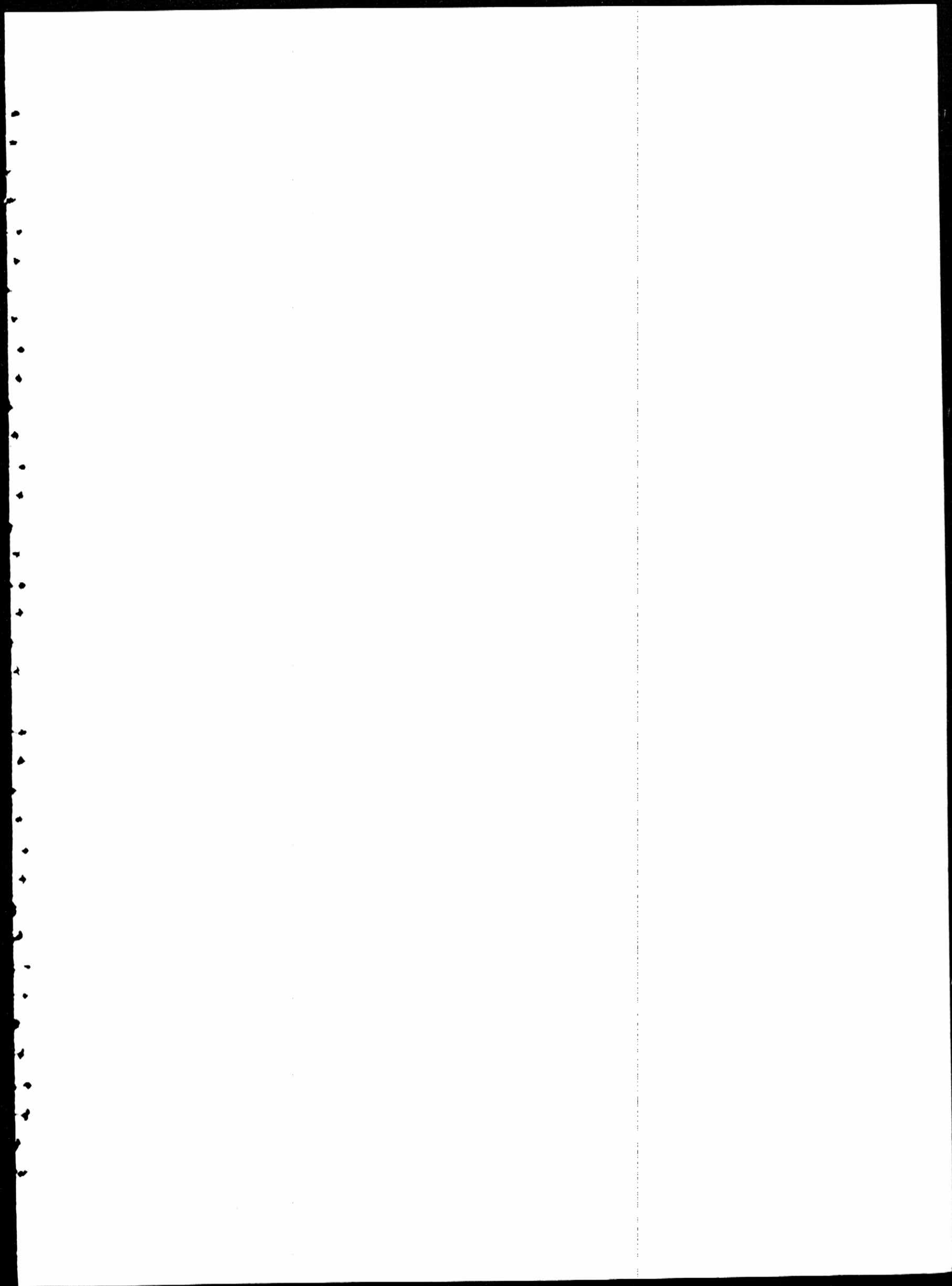
[Filed April 23, 1964]

NOTICE OF APPEAL

Notice is hereby given this 23rd day of April, 1964, that Louise Hilsamer hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 25th day of March, 1964 in favor of Daniel W. Gideon, Administrator, estate of George D. Gideon against said Louise Hilsamer.

/s/ Charles H. Quimby
Attorney for Plaintiff

* * *



BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,654

LOUISE HILSAMER,

Appellant,

v.

DANIEL W. GIDEON, Administrator,
Estate of George D. Gideon,

Appellee.

Appeal from The United States District Court
for the District of Columbia

HERMAN MILLER

421 - 4th Street, N. W.
Washington, D. C.

Attorney for Appellee.

SEP 21 1964

Nathan J. Paulson
CLERK

(i)

STATEMENT OF QUESTIONS PRESENTED

In the opinion of the appellee the questions presented are:

1. Is the language contained in the landlord and tenant monthly agreement between the parties dated September 1, 1958, to the effect that "if no default is made in the monthly payment Lessee has option to purchase said property on rental basis, for a price of \$23,750.00. Interest to be charged at rate of 6% per annum on unpaid balance" so free from uncertainty, ambiguity and contains clear terms under which a court can decree specific performance?
2. Assuming the above language is so certain which the court can enforce, and where nothing more is contained, within what time must tender of amounts necessary to be paid by appellant and tender of all necessary executed papers for the balance of the purchase money be made after attempted exercise of the option on February 8, 1961, and is such letter, with nothing more, sufficient tender?
3. Where the appellant admitted by her letter of February 8, 1961 that she was obligated for payment of taxes and license fees, and further admitted she had not paid installment of rent when it became due, and further admitted she had not carried nor paid for public liability insurance as required by the agreement, are these defaults sufficient to be deemed a breach of the contract?

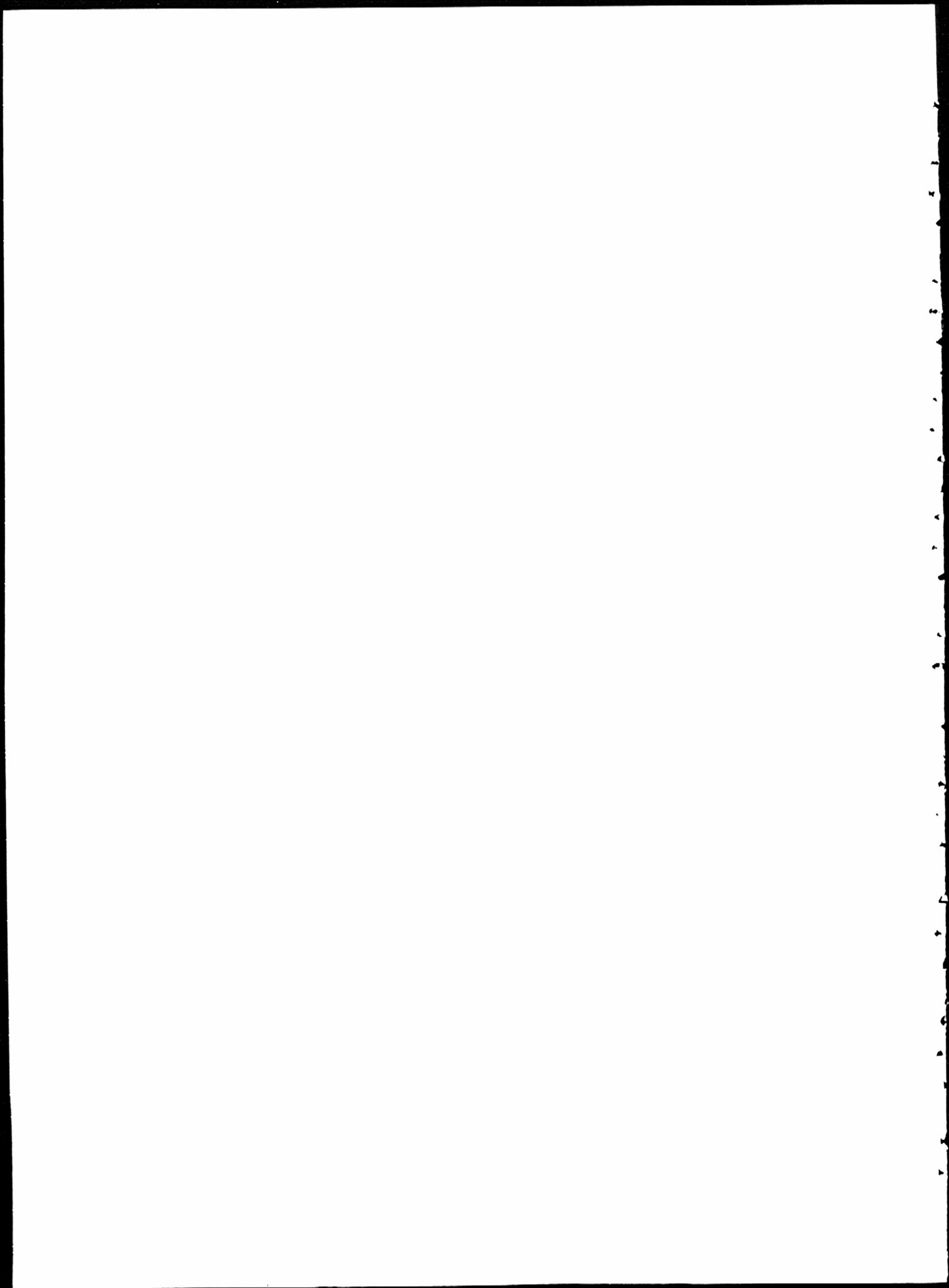
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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,654

LOUISE HILSAMER,

Appellant,

v.

DANIEL W. GIDEON, Administrator,
Estate of George D. Gideon,

Appellee.

Appeal from The United States District Court
for the District of Columbia

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

The pre-trial order (J.A. 1 to 9 inc.) contained the following undisputed facts: On September 1, 1958 appellant and George D. Gideon entered into the agreement which is set out on pages 38, 39 and 40 of the joint appendix, and which was introduced in evidence as Plaintiff's Exhibit No. 1, and thereupon appellant entered into and remained in

possession. Under the undisputed facts Defendant's Exhibit No. 1, found on pages 36, 37 and 38 of the joint appendix, was stipulated to as being the sums paid by appellant, the items for which payment was received, and the dates thereof. On February 8, 1961 (Plaintiff's Exhibit No. 2, J.A. 40-41), appellant, and again by her attorney on September 25, 1961 (Ex. 7), attempted to exercise the option contained in Plaintiff's Exhibit No. 1, and the proposed sales contract (Exhibit No. 3 dated October 4, 1961, J.A. 41-44) was sent Mr. Gideon by appellant's counsel, with a covering letter dated October 7, 1961 (Plaintiff's Exhibit No. 4, J.A. 44-45). Appellant offered her Exhibit No. 8 (J.A. 47) showing a conditional commitment for a first trust loan. On February 10, 1961 appellee's decedent wrote to appellant (Plaintiff's Exhibit No. 9, J.A. 51-52). Attached to said pre-trial order was a statement of receipts and expenses of appellee's decedent (J.A. 6-9) which is similar to Defendant's Exhibit No. 1 (J.A. 36-38).

The Court could have found from the evidence that after some uncertain preliminary negotiations between the appellant and appellee's decedent (J.A. 10-13), the lease agreement dated September 1, 1958 was executed between the parties.

Although the agreement required the appellant to obtain owner's landlord and tenant liability policy in limits of \$10/20,000, the appellant did not procure such insurance (J.A. 14). On February 8, 1961 (Plaintiff's Exhibit 2, J.A. 16), appellant attempted to exercise the option. At that time appellee's decedent paid appellant's license fee, which was not reimbursed to him but it increased the amount due by appellant. (J.A. 16) Thereupon appellant offered her Exhibit No. 3 in evidence, which was signed by her but not by the appellee's decedent. In the discussion concerning this exhibit, counsel for appellant, in response to the Court's inquiry, admitted that this exhibit had been sent to appellee's decedent with a portion stricken out in red. Exhibit No. 3, at J.A. 41, shows the following words stricken: "Purchaser to receive credit for sums heretofore paid under written agreement between the parties dated September 1, 1958 at rate of \$200.00 per month or \$7,400.00." These words are the

words stricken out in red and then sent to appellee's decedent, and then returned to appellant's counsel unsigned. (J.A. 18) Plaintiff's Exhibit No. 8 shows a commitment from Perpetual Building Association for \$14,000, conditioned upon and subject to painting all exterior wood and metal work, and furnishing satisfactory release of liens and payment of a loan fee of 1%, plus appraisal and inspection fee, and to be accepted within 30 days. (J.A. 47-48) It should be noted that there is no evidence that the appellant ever accepted this commitment.

The Court also had evidence that the original agreement (Exhibit No. 1) had been left with the appellant and she submitted it to a friend who examined it; that she was not prevented from submitting it to counsel, and she stated it was "pretty clear. I could read it. I understood it." (J.A. 21-22). On page 26 of the joint appendix the appellant was asked if she knew why in her Exhibit No. 3 the words "the purchaser to receive credit for the sums heretofore paid under written contract dated September 1, 1958 at rate of \$200.00 per month to October 1, 1961 or \$7,400.00" was scratched out before she signed it, and she had no explanation. (J.A. 26) Appellant stated she obtained a Mr. Jackel's check for \$2,000 on or prior to October 4, 1961, but she did not know to whom it was payable. (J.A. 26) After she obtained Perpetual's commitment for \$14,000 first trust on October 19, 1961, she never got an estimate as to what it would cost to paint all of the exterior woodwork and metal work. (J.A. 27-28)

Appellant further admitted that she did not make the payments under the agreement of September 1, 1958 on the date they were due, nor did she, on October 7, 1958, pay \$95 for a fire insurance premium; nor on November 20, 1958, or prior, did she pay public liability insurance in sum of \$41.58. In December 1958 she paid only \$100 when in fact \$200 was due, and in September 1959 she did not pay taxes in sum of \$258.06; nor did she pay in November 1959 public liability insurance for \$41.55, nor in September 1960 did she pay \$32.34 for liability insurance. (J.A. 28-29)

On page 35 of the joint appendix the Court observed that if, in December 1958 appellant only paid \$150 rent, and if her payments then were applied to license fees, she would be in arrears in her rent.

Again, on page 35 of the joint appendix, appellant admitted she never made her payments on time and that appellee's decedent wanted to be reimbursed for public liability insurance premiums, but she could not say when. (J.A. 35)

By stipulation in pre-trial order Defendant's Exhibit No. 1, appellee's payment book, was in evidence.

On this evidence the Court made its findings of fact and conclusions of law. (J.A. 53-55)

SUMMARY OF ARGUMENT

1. From all of the evidence adduced, the contract is so ambiguous and uncertain as not to be susceptible of specific performance. From an examination of the contract and the testimony of the parties, it was not clear as to what was the contract of the parties.

2. Even if there was no uncertainty, the appellant made no tender entitling her to specific performance. The contract did not provide, nor was there any evidence that, at the time of the exercise of the option, the appellant was entitled to any terms. The option stated the price was to be \$23,750, interest to be charged at rate of 6% per annum on unpaid balance. The appellant stated \$2,000 was loaned to her, and she received a Perpetual Building Association commitment for \$14,000, which was conditioned on certain repairs being made, with a cash payment of \$9,400 to be made by appellant, none of which was shown to have been made.

3. The lease agreement was explicit in that the exercise of the option was on the basis if no defaults were made in the monthly payments. Not only did the appellant continually fail to make the payments

when due, and she was continually in default but she also defaulted in her obligation to carry owner's landlord and tenant liability insurance to protect herself as well as the lessor in limits of \$10/20,000 and to provide lessor with a certificate of said policy. Failing to do this, and breaching her contract, she is not entitled to the aid of the Court in equity.

ARGUMENT

1. The contract was ambiguous and uncertain and incapable of being specifically enforced. The written agreement between the parties is essentially and primarily a landlord and tenant monthly agreement. As an addition in the last four lines, option was given appellant "If no default is made in the monthly payments" for a price of \$23,750, interest to be charged at 6% per annum on unpaid balance, and the right to purchase is on a rental basis. The appellant states she clearly understood the contract, but these questions immediately arise. Does the price of the property rise when the option was exercised? It seems apparent that this price comes into being when the option is attempted to be exercised. There is nothing in the wording which gives the appellant right to any credits for any kind of payments made prior to exercise of this option. She claims, contrary to what is stated in the agreement, that she was entitled to the full amount of all payments made by her prior to her exercising the option. If this be so, then she would not have to exercise the option until the total aggregate amount of her rent payments totaled \$23,750, and in this way she would avoid payment of interest at 6% per year on the unpaid balance, and the stipulation for payment of interest would be nugatory and valueless. If appellant's contention is correct, it would be ridiculous to exercise the option obligating herself to payment of interest and taxes when, under her contention, she could wait until the full amount of rents equalled said \$23,750 and avoid such interest and taxes. The agreement clearly states and describes

all payments made prior to any attempt to exercise the option as "rent," and nowhere is any description given or provision made that these same "rent" payments can also be considered as purchase price. Further, what does the phrase "purchase said property on a rental basis" mean? What are the amounts to be charged on rental basis? How is this to be determined? Unless the terms are certain, the court cannot decree specific performance.

The principles governing the right to specific performance are clear. It is decreed only in the sound discretion of the Court.¹ And in these cases the Court has broad discretion.²

In an early case it was held that even if the whole contract is in writing, yet, if it be not clear, specific performance will not be enforced. See *Repetti v. Maisak*, 6 Mackey 366, 17 D.C. 366.

In *Evans v. Neumann*, *supra*, this Court used the following language:

"It is equally well settled that specific performance, even when the contract is admitted, rests in the sound discretion of the court, and will not be decreed as a matter of right * * * (citing *Hennessey v. Woolworth*, 128 U.S. 438, 32 L. Ed. 500) * * * It should never be granted unless the terms of the agreement sought to be enforced are clearly proved, or where it is left in doubt whether the party against whom relief is asked in fact made such an agreement."

In *Crowell v. Gould*, *supra*, the following language appears:

"In order that such relief may be granted it must be shown that the contract in question is free from self-contradiction, and there is no basis for a reasonable misunderstanding between the parties as to its import and meaning * * * In fact there must be such clarity as to the meaning of the contract and the pleader's

¹ *Evans v. Neumann*, 51 App. D.C. 300, 278 F. 1013; *Smith v. Taylor*, 65 App. D.C. 40, 79 F.2d 165; *Crowell v. Gould*, 68 App. D.C. 297, 95 F.2d 569.

² *Drayson v. Height*, 88 U.S. App. D.C. 356, 189 F.2d 658.

right thereunder, that the Court can require a specific thing to be done. It cannot substitute a contract of its own making for that of the parties."

Even appellant is unclear as to the contract in tendering Plaintiff's Exhibit No. 3 in eliminating credits for payments made by striking such language before submitting the offer.

When the evidence is tested in the light of these principles, the appellant failed to prove such a contract which was certain, and free from ambiguity.

2. The appellant failed to make any unqualified tender of the price. The evidence shows that the appellant attempted to exercise the option first on February 8, 1961, Plaintiff's Exhibit No. 2. In this exhibit, appellant admits the balance due is \$17,500 *to be increased by taxes and license fees paid by appellee's decedent during the period of her tenancy*. There was nothing in the option which required vendor to make any arrangements with the title company, and it is clear no tender of any kind was made in the exercise of this offer, either by payment of any money, or tender of any papers to evidence the unpaid balance claimed by appellant, nor any terms of any kind. It was not until October 7, 1961 a further attempt was made to exercise the option. This time a unilaterally executed contract was signed by appellant for \$23,750, with a \$2,000 down payment in which appellant was to place a first trust of a maximum amount, without any specification of terms therein, and in which the balance of the deferred purchase money was to be secured by a second trust payable \$10 per \$1,000, with a great many terms as shown by such exhibit. It is in this exhibit the credit for aggregate payments made as rent is stricken by appellant's counsel prior to submitting this offer to appellee's decedent. There is nothing in the option setting a \$2,000 down payment; nothing requiring appellee's decedent to consent to a first trust to Perpetual, without specification of terms, or that he was required to accept a second trust at \$10 per

\$1,000, or that he agreed to adjustment of taxes, water rent, insurance or interest to date of transfer, or that he agreed to a 60 day settlement, or he agreed to settlement at appellant's attorney's office, or he agreed to give possession at time of settlement. (It must be remembered that appellant had possession since September 1, 1958, and since that time she was required to comply at her own expense with all rules of the District of Columbia pertaining to operation of a rooming house.) Nevertheless, this contract required appellee's vendee to comply with all orders or violations affecting the property prior to time of settlement of this contract which was proposed to be 60 days hence.

In addition, assuming that Plaintiff's Exhibit 8, Perpetual's commitment, may be accepted, there was no evidence here that the appellant did or could comply with the conditions thereof, namely, pay a minimum cash of \$9,400 (the proposed contract required only \$2,000) or that the appellant was in a position to make the required repairs of painting the exterior woodwork and metal work. Tender of purchase money and notes for the deferred purchase money is a condition precedent to right of specific performance. See *Jenkins v. Locke*, 3 App. D.C. 485.

Since there were no specifications concerning the procedure, when the appellant attempted to exercise the option on February 8, 1961, she was required, within a reasonable time, to make tender of performance, assuming the contract was not vague, indefinite and uncertain. Re-attempting again to exercise the option on October 7, 1961, some eight months later, comes after an unreasonable time, and is made on terms not contained in the option.

3. The appellant defaulted in the contract. The contract expressly requires no default in payment, but nevertheless the appellant admitted that she did not always pay the installments when due. (J.A. 28) The agreement required her to carry owner's landlord and tenant liability insurance in limits of \$10/20,000, which she admitted she did not do. (Also J.A. 28) In her Exhibit 2 (J.A. 40), she admitted her obligation to pay taxes and license fees. (J.A. 29 and 34)

In requesting equity, the appellant must be free from defaults herself.

There is no inconsistency between findings three and five of the Court. In finding three the Court was referring to the requirement of appellant to pay taxes and fire insurance, and that the contract did not require her to do so (even though appellant recognized her obligation to pay taxes by her Exhibit No. 2). In finding five, reference is made to the clear contractual obligation to pay for public liability insurance. The Court, in Finding 10, was clearly finding the uncertainty of the contract and, taken in the light of Finding three, doubt and uncertainty resulted in the Court's mind. But with respect to finding 12, merely having \$2,000 in the possession of her attorney, and having a contingent commitment, was not tender, nor was it ever offered, and there was no requirement for the vendor to consent to a first trust and then accept a second trust under terms not specified, and the reference to Exhibit 7 is not only without consideration, but also conditional and ambiguous as to terms and conditions.

With respect to appellant's first argument, the appellant herself stated the terms of the agreement were clear to her and she understood them, and she submitted the agreement to another person for advice, which makes the first point untenable.

CONCLUSION

We respectfully submit the judgment of the trial court was correct and should be affirmed.

Respectfully submitted,

HERMAN MILLER

421 - 4th Street, N. W.
Washington, D. C.

Attorney for Appellee.

REPLY BRIEF OF APPELLANT

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,654

LOUISE HILSAMER,

Appellant,

v.

DANIEL W. GIDEON, Administrator,
Estate of GEORGE D. GIDEON,

Appellee.

Appeal from The United States District Court
for the District of Columbia

United States Court of Appeals
for the District of Columbia Circuit

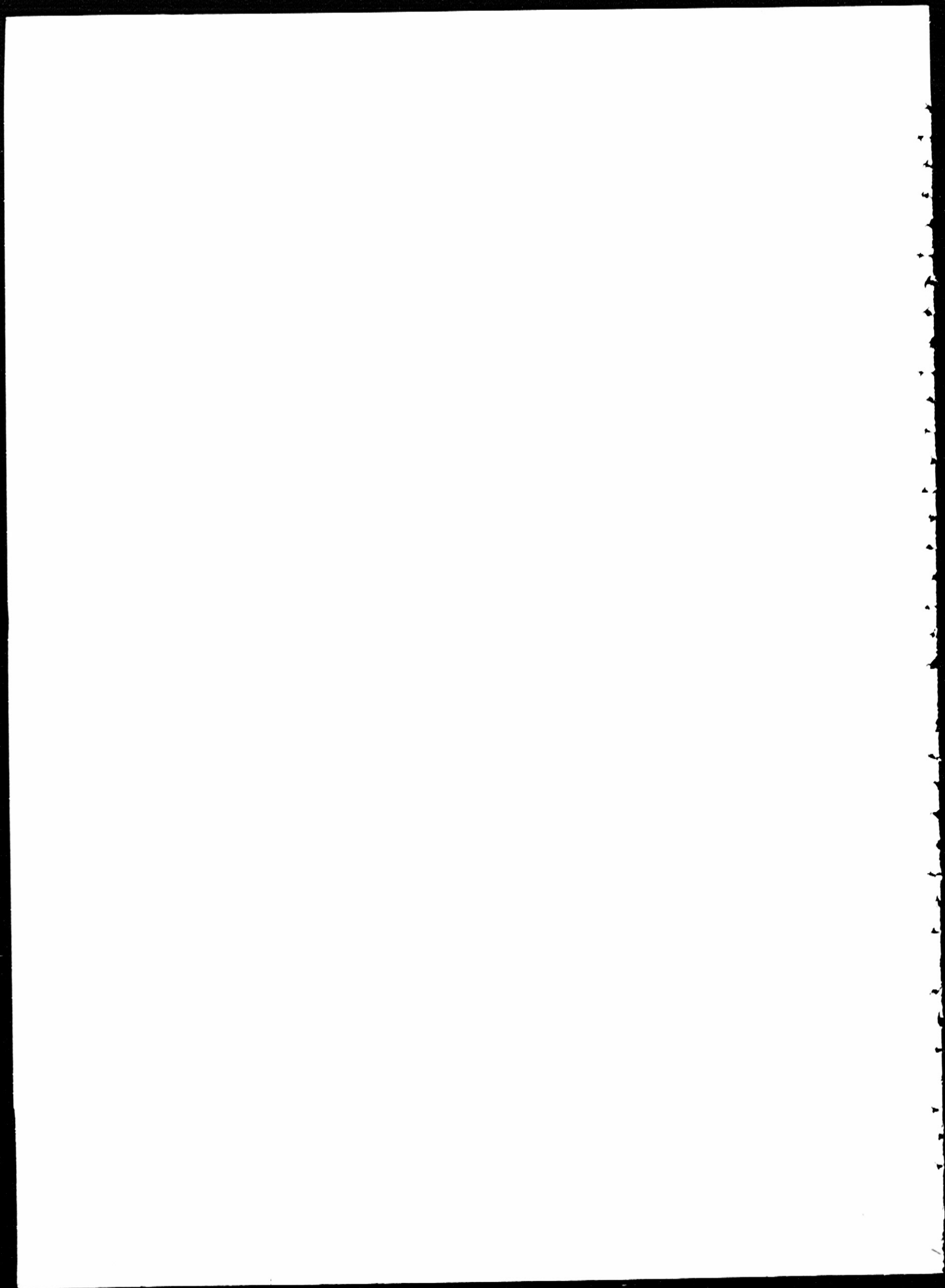
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REPLY BRIEF OF APPELLANT

Counsel for appellant finds it necessary to bring to the attention of this Court an error committed during the trial of this cause below, which error was committed solely through the misunderstanding of a question of the trial court concerning pl.'s exh. 3. Counsel states that as a matter of fact and truth pl.'s exh. 3 was prepared by counsel for the appellant and after signature by appellant, was mailed by counsel

to the defendant Gideon. At the time of mailing the following words appeared on the face of pl.'s exh. 3:

"Purchaser to receive credit for sums heretofore paid under written agreement between parties, dated September 1, 1958, at the rate of Two Hundred Dollars (\$200.00) per month to October 1, 1961, or Seven Thousand, Four Hundred Dollars (\$7,400.00)."

Pl.'s exh. 3 was subsequently returned by the said Gideon with the words quoted immediately above stricken out in red ink or red pencil. During the trial, counsel was asked by the trial court concerning the fact that the language had been stricken with red pencil all as appeared in J.A. 23-24. However, counsel at the time of the trial understood the court was inquiring as to whether the exhibit had been delivered by Gideon with the words stricken in red rather than *to* Gideon. It is submitted that without the inclusions of the words quoted above that the contract did not constitute an offer inasmuch as there would be no offer to pay the full purchase price of \$23,750 as shown by the exhibit, whereas by the inclusion of the words so stricken the total purchase price is provided for. Counsel says that this error occurred under the stress of trial and did not come to his attention until he was preparing his brief at which time he immediately called the situation to the attention of counsel for the appellee. Counsel for the appellee then stated that he could not consent to any correction in this respect and suggested that it be brought to the attention of the Appellate Court for such action as Court deems proper under the circumstances.

Counsel for appellant states that he still has in his file an exact duplicate of exh. 3 which was signed by Mrs. Hilsamer but which was retained in counsel's files and this copy does not contain any delineations as is shown on exh. 3 by red ink, red pencil or otherwise.

As counsel for the appellee has pointed out in his brief, Mrs. Hilsamer knew nothing of the red ink or red pencil delineations.

It is sincerely requested by counsel for appellant that under the circumstances an obvious error such as referred to above will not be cause for the plaintiff to lose her rights to fulfillment of the sales contract, when such error was not the fault of the appellant in any respect, but solely the responsibility and fault of counsel for appellant.

Respectfully submitted,

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